Evaluation of the Ontario Mandatory Mediation Program (Rule 24.1): Final Report -- The First 23 Months

March 12, 2001

Submitted to:
Civil Rules Committee: Evaluation Committee
for the Mandatory Mediation Pilot Project

Submitted by:
Robert G. Hann and Carl Baar
with
Lee Axon, Susan Binnie and Fred Zemans

Robert Hann and Associates Limited

© Queen's Printer 2001

This report was prepared in fulfillment of a contract between the Ontario Ministry of the Attorney General and Robert Hann & Associates Limited. Any opinions expressed in this report are those of the authors and do not necessarily reflect the opinions of the Evaluation Committee for the Mandatory Mediation Pilot Project or the Ontario Ministry of the Attorney General.

© Queen's Printer 2001
ISBN 0-7794-1227-3

101-05538/

Table of Contents

Chapter 1: Introduction and Executive Summary **1**
1.1 Objectives of the Evaluation 2
1.2 Main Overall Findings and Recommendations 3
1.3 Other Aspects of the Scope of the Evaluation 4
1.4 Format, Specific Findings and Recommendations 4
1.4.1 Caseflow Context: from Claim to Mediation 5
1.4.2 The Pace of Mediated Litigation 9
1.4.3 The Costs of Mediated Litigation 11
1.4.4 The Impacts of Rule 24.1 on Dispute Resolution Outcomes 16
1.4.5 The Mediation Process and Procedures 18
1.4.6 Report Appendices 19

Chapter 2: Caseflow: From Claim to Mediation **19**
2.1 Introduction 19
2.2 Case-Managed Cases Commenced, Defended and Eligible for Mandatory Mediation 20
2.2.1 Types of Cases Included in and Excluded from Rule 24.1 20
2.2.2 A Different Mix of Cases Commenced in Ottawa and Toronto 20
2.2.3 Trends in Cases Commenced over Time 21
2.2.4 Defence Rates 23
2.2.5 The Mix of Defended Cases Proceeding to Mandatory Mediation 24
2.2.6 Trends in Defended Cases under Rule 24.1 26
2.3 The Mediation Status of Pilot Project Cases 27
2.4 Number and Nature of Mediations 29
2.4.1 Trends in the Number of Mediations 29
2.4.2 The Mix of Mediated Cases 30
2.4.3 Other Characteristics of Mediated Cases 30

Chapter 3: The Pace of Mediated Litigation **34**
3.1 Introduction 34
3.2 Developing the Control Group 35
3.3 The Key Finding 37
3.4 Analysing the Key Finding 39
3.5 The Results in Context: Ottawa 40
3.6 The Results in Context: Timing from Date of Claim to First Defence 44
3.7 The Results in Context: Timing of the Mediation Itself 46
3.8 Patterns of Litigation in Ottawa and Toronto 48
3.9 Participants' Views on the Timing of Mandatory Mediation 49
3.10 Summary Comments on Perceptions of Litigants, Lawyers and Mediators 54

Chapter 4: The Cost of Mediated Litigation **55**
4.1 Introduction 55
4.2 Views of Participants 55

4.2.1 Ottawa *56*
4.2.2 Toronto *57*
4.2.3 Comparison of Legal Costs in Ottawa and Toronto *58*
4.3 Evaluation Questionnaire Results 58
4.4 The Duration of Mediation 61

Chapter 5: Impacts of Rule 24.1 on Dispute Resolution Outcomes 63
5.1 Introduction 63
5.2 Success in Reaching Complete and Partial Settlement 65
5.2.1 Overall Rates: Comparison of Ottawa and Toronto *65*
5.2.2 Have Settlement Rates Changed Since the Introduction of Rule 24.1? *66*
5.2.3 How Long Has it Taken to Achieve Current Settlement Rates under the New Rule? *68*
5.2.4 Identifying Which Cases Have the Highest and Lowest Settlement Rates at Mediation *69*
5.3 Outcomes Other Than Complete Settlement: Resolution of Specific Issues (for cases not completely settled) 90
5.3.1 At Least Partially Settled Outcomes *90*
5.3.2 Partly Settled Outcomes *91*
5.3.3 Whether Partial Settlement is Related to Issues on the Statement of Issues or To Other Issues *91*
5.3.4 Progress on Which Specific Substantive Issues *91*
5.4 Other Benefits of Mediation Beyond Partial or Complete Settlement of Issues 93
5.5 Satisfaction of the Parties with Mediation Outcomes 96
5.5.1 Satisfaction with the Overall Mandatory Mediation Experience *97*
5.5.2 Was Justice Served? *98*
5.5.3 Would Mandatory Mediation be Used Again? *99*
5.5.4 Was the Settlement Better for the Client than it Would Have Been Without Mandatory Mediation? *100*
5.5.5 Was the Settlement Fairer? *101*

Chapter 6: The Mediation Process and Procedures 102
6.1 Introduction 102
6.2 Measures of Participant Satisfaction with the Process 103
6.3 Providing the Parties with Information 104
6.4 Procedures for Selection, Training and Monitoring of Mediators 107
6.5 Concentration of Mediator Activity 108
6.6 Contribution of the Busiest Mediators to Overall Program Performance 110
6.7 Administrative Monitoring of Active Pending Mediations 112
6.8 Other Observations Related to Rules, Procedures and Administration 115

APPENDIX A: SUPPORTING FIGURES 117

APPENDIX B: METHODOLOGY 150

APPENDIX C: EVALUATION QUESTIONNAIRES 178

Acknowledgements

The large amounts of information collected especially for this project could not have been obtained without the considerable assistance of many people over the course of the evaluation. We especially extend our thanks for the assistance offered by: the Local Mediation Coordinators in both Toronto and Ottawa, who gave freely of their expertise and time in assisting the evaluation team members in all aspects of the project; the Ministry staff who worked with us in finding new and innovative ways to extract the data we required from the Ministry automated information systems; the mediators and lawyers who were instrumental in working with the evaluators in designing and running the focus group sessions; the volunteer members of the Local Mediation Committees, who were especially helpful during the early stages in improving the design of the study; all those interviewed throughout the study; and the chair and members of the Evaluation Committee of the Civil Rules Committee--and the project managers from the Ministry of the Attorney General--for their ongoing guidance, constructive criticism and support.

Finally, special thanks are extended to the many mediators, lawyers and litigants who provided critical information for the evaluation by filling out long and complex evaluation forms in hundreds of cases in Ottawa and Toronto.

Chapter 1: Introduction and Executive Summary

1.1 Objectives of the Evaluation

Rule 24.1 introduced subject to evaluation

On January 4, 1999, Rule 24.1 introduced -- on a test basis – a common set of rules and procedures mandating mediation for non-family civil case-managed cases in the Ontario Superior Court of Justice in Ottawa and Toronto, Canada.

Continuation of the Rule past July 4, 2001 was to be in large part dependent on the results of a thorough and independent 23-month evaluation – with supervision of the evaluation being undertaken by a committee of the Civil Rules Committee, the Evaluation Committee for the Mandatory Mediation Pilot Project.

Accordingly, the Ontario Ministry of the Attorney General, at the request of the Civil Rules Committee, instituted a competitive process to select an independent evaluator to conduct an intensive and broad-ranging evaluation covering the first 23 months of the Rule.

This document is the final report of that evaluation.

Four areas evaluated

The evaluation addresses a wide range of issues of interest to the Civil Rules Committee, to the judiciary, to governmental policy makers, to the general public -- and to lawyers, mediators, court administrators, litigants and other stakeholders involved in the day to day operation of the court and litigation processes.

However, the focus of the evaluation was on the four major objectives of mandatory mediation under Rule 24.1, namely:

- Does Rule 24.1 improve the pace of litigation?
- Does Rule 24.1 reduce the costs to the participants in the litigation process?
- Does Rule 24.1 improve the quality of disposition outcomes? and
- Does Rule 24.1 improve the operation of the mediation and litigation process?

1.2 Main Overall Findings and Recommendations

Key overall findings

Section 1.4 summarizes the key specific findings of the project. However, all of those findings should be considered in light of one overall finding:

- In light of its demonstrated positive impact on the pace, costs and outcomes of litigation, Rule 24.1 must be generally regarded as a successful addition to the case management and dispute resolution mechanisms available through the Ontario Superior Court of Justice in both Toronto and Ottawa. More specifically, the evaluation provides strong evidence that:
  - Mandatory mediation under the Rule has resulted in significant reductions in the time taken to dispose of cases.
  - Mandatory mediation has resulted in decreased costs to the litigants.
  - Mandatory mediation has resulted in a high proportion of cases (roughly 40% overall) being completely settled earlier in the litigation process – with other benefits being noted in many of the other cases that do not completely settle.
  - In general, litigants and lawyers have expressed considerable satisfaction with the mediation process under Rule 24.1.
  - Although there were at times variations from one type of case to another, these positive findings applied generally to all case types – and to cases in both Ottawa and Toronto.
- The evaluation has also identified a limited number of specific areas in which improvements to the Rule would enhance the operation of the mediation program.

Key overall recommendations

In light of these findings, it is recommended that:

R 1. The Rule be extended for the current types of cases covered beyond July 4, 2001.

R 2. The Rule be amended, or other procedural changes be made in line with the findings in this report, as part of a process of continuous improvement of Rule 24.1.

R 3. The Rule be extended to other civil cases in Toronto and across the province as part of the expansion of case management.

1.3 Other Aspects of the Scope of the Evaluation

Besides focusing on all four major areas in which mandatory mediation was expected to have an impact, other aspects of the design of the evaluation differentiated it from similar previous evaluation efforts.

Actual and perceived impacts

First, the main focus of the evaluation was on the *actual* impact that the Rule had in each of the areas of pace of litigation, costs, outcomes and process. However, recognizing that the success of any new initiative relies as well on the expectations and perceptions of various groups, the evaluation devoted considerable effort to assessing the *expected and perceived* impacts of the Rule.

Particular attention was paid to comparing the perceptions of litigants, mediators and lawyers on key issues – and to differences in perceptions of stakeholders in Ottawa and Toronto. Finally, comparison of perceptions of accomplishments with actual accomplishments in certain areas yielded especially interesting results.

Impacts assessed in two different court environments

Second, the scope of change introduced by Rule 24.1 was significantly different for Toronto and Ottawa. Prior to January 4, 1999, court-connected and essentially voluntary mediation was utilized in Toronto through a relatively small pilot project for only a small percent of the case-managed civil cases. In addition, only 25% of "eligible" civil claims (16% of the total civil caseload) in Toronto are case managed. Conversely, prior to January 4, 1999, Ottawa had for two years – under a local Practice Direction – already conducted mandatory mediations for all civil case-managed cases. Virtually all of the Ottawa civil caseload is case managed.

This evaluation is therefore especially important and useful since it assesses the impacts of introducing mandatory mediation in two very different court settings -- one relatively unfamiliar with mandatory mediation, the other very familiar with (and committed to) a different set of procedures for conducting mandatory mediations.

Confidence in results enhanced by multiple sources of data utilized

Third, the evaluation was able to develop and cross-check its findings against extensive quantitative and qualitative information collected from a wide variety of sources,[1] including:

- data on some 100 variables for each of some 23,000 cases commenced since 1996 – extracted from the ongoing automated court information systems maintained by the Ontario Ministry of the Attorney General;
- Key data on over 3000 mediations – provided through a specially designed form (the Mediator's Report) filled out by mediators in all mediations under Rule 24.1;

[1] Data sources are described in detail in Appendix B.

- More extensive data on participants' perceptions on the full range of potential impacts of mediation in a large sample of specific mediations – from 600 evaluation questionnaires completed by litigants, 1,130 completed by lawyers and 1,243 completed by mediators –all specifically designed for the evaluation;
- The results of a number of separate workshops and focus groups conducted with the assistance and broad participation of lawyers, mediators and the Local Mediation Committees in both Ottawa and Toronto;
- The insights offered by key members of the bench, the bar, mediators, case management masters, and court administrators and policy personnel – through key-person structured interviews with those who designed and participated in this and other mediation programs, and
- Data on the timing and outcomes of litigation in a control group of cases conducted before the introduction of the Rule – through a special questionnaire completed by lawyers in those cases.

The breadth and variety of perspectives offered through this wealth of information greatly enhances the confidence that can be placed in the evaluation findings. The acknowledgements give credit to the large number of people who contributed to the collection of this information.

1.4 Format, Specific Findings and Recommendations

The evaluation's more specific analysis, findings and recommendations are presented in five chapters and three appendices.

1.4.1 Caseflow Context: from Claim to Mediation

Chapter 2 provides an operational context for understanding the results in the succeeding chapters. It also provides a description of some of the key characteristics of the mediated cases.

Key findings regarding caseflow

The chapter describes a court caseflow environment in which:

- The inclusion of Simplified Rules cases within the scope of Rule 24.1 in Ottawa, but not Toronto, would lead to misleading findings unless results for Simplified Rules cases were reported separately.

- After removing Simplified Rules cases, different case types comprise similar proportions of the total caseload in both Ottawa and Toronto (the exception being for motor vehicle cases which are proportionally more prevalent in Toronto).
- The number of defended cases eligible for mediation under Rule 24.1 has been fairly stable over the past 12 months in both Ottawa and Toronto.
- There had been steady initial growth in both Ottawa and Toronto in the numbers of mediations that were completed each quarter. That upward growth continued in Toronto until the second quarter of 2000, after which a decrease occurred. Conversely, the number of mediations per quarter has been stable throughout 2000 in Ottawa.

Key characteristics of mediations

In completed mediations

- Parties are considerably more likely in Ottawa than in Toronto to select their own mediator (82% of Ottawa mediations vs. only 53% of Toronto mediations).
- Selection of off-roster mediators is very rare in Ottawa (1%), but less rare in Toronto (6%).
- A sizeable proportion of mediated cases involve two or more defendants (45% in Ottawa vs. 54% in Toronto).

Recommendations regarding caseflow characteristics of mediations

In light of these findings **it is recommended that:**

R 4. Any comparison between cities take into account differences in the mix of case types. In particular, analyses comparing Ottawa and Toronto should separate out results related to Simplified Rules cases.

R 5. Because of its importance to an understanding of how mandatory mediation functions, the considerable difference between Ottawa and Toronto regarding the likelihood of parties selecting their own mediator be monitored on an ongoing basis.

R 6. Monitoring of the use of non-roster mediators continue.

1.4.2 The Pace of Mediated Litigation

Chapter 3 addresses the first fundamental question of the evaluation, "Does mandatory mediation under Rule 24.1 reduce delay?"

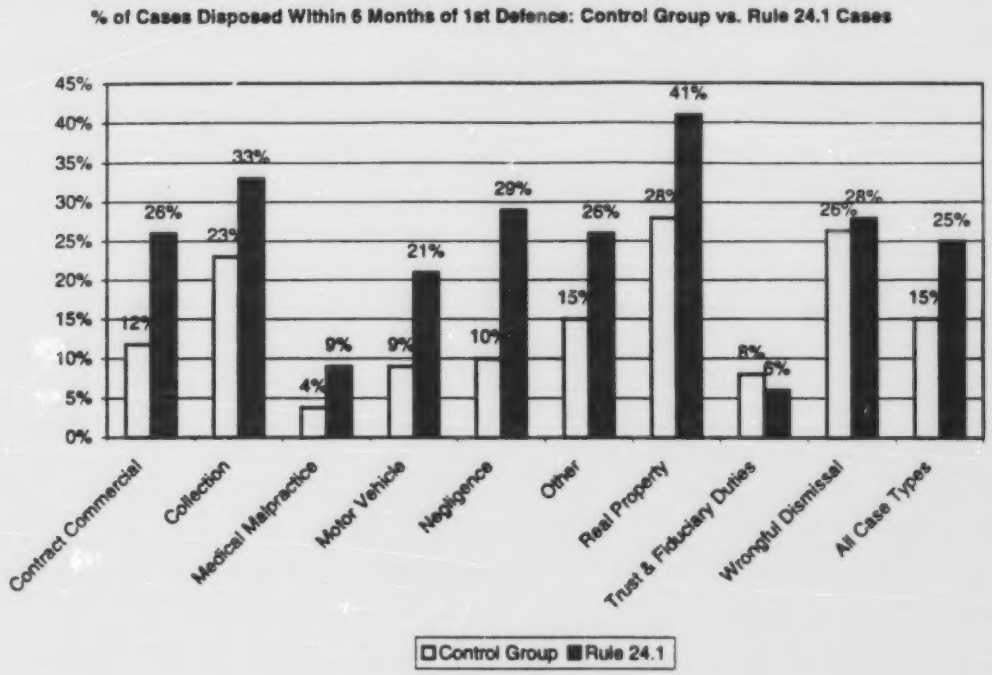
Findings regarding the overall pace of mediated litigation

The overall conclusion of the chapter is that **cases under Rule 24.1 do proceed to disposition faster than did case-managed cases before the introduction of the Rule.**

Analysis comparing times from first defence to final disposition for cases in a control group of case-managed cases defended before the introduction of Rule 24.1 and defended mediated cases subject to the Rule found:

- For all case types combined, a substantially larger proportion of cases in the mandatory mediation sample were disposed of at 3, 6, 9 and 12 months after defence.
- This finding also generally applied when each of ten case types were examined separately. Figure 1.1 for example compares control group and Rule 24.1 cases in Toronto in terms of the percentage of cases finally disposed within 6 months of first defence.

Figure 1.1



- For each case type (except trust and fiduciary duties) a higher percentage of Rule 24.1 cases had been disposed within 6 months than for cases in the control group.
- Further, as shown later in Chapter 3, when the comparison is made both after 9 months and after 12 months from first defence, higher percentages are disposed under Rule 24.1 in each and every case type.
- The improvement in disposition rates within 12 months varied considerably with the type of case, but were especially dramatic for negligence, contract/commercial, collections, wrongful dismissal, and trust and fiduciary duties cases.

Ottawa compared to Toronto

A comparison was also made of the results at the two pilot project sites, Ottawa and Toronto. Comparisons were also made between Ottawa under the earlier Practice Direction and Ottawa under Rule 24.1. The results show that:

- Case dispositions in Ottawa have been somewhat more expeditious under Rule 24.1 than in Toronto.
- Case dispositions under the Practice Direction in Ottawa were somewhat faster than under Rule 24.

The chapter also tested whether litigants were delaying the filing of a defence to subvert the defence-triggered time lines in Rule 24.1:

- In fact, cases were found to be defended somewhat more quickly under Rule 24.1 than they were in the period before the Rule. This finding applied in both Ottawa and Toronto.
- There is, however, evidence of a modest increase under the Rule in the rate at which cases are defended.

Examination of the time between the first defence and the mediation found that the time provisions of the Rule were satisfactory; i.e. cases were being mediated within reasonable tolerances of the 90- and 150-day time standards:

- In both Toronto and Ottawa, over half the mediations were held within 90 days.
- Just under one-third of the mediations were held between the 90-day standard and the extension to 150 days allowed by the Rule.
- The flexibility of the Rule was demonstrated by roughly a sixth of the mediations in Ottawa and one in seven mediations in Toronto being allowed to occur after the 150-day time standard.
- The time to mediation seems to be more "rule driven" in Toronto, with litigants more likely than in Ottawa to delay the mediation to the last possible time allowed by the 90- and 150-day time standards in the Rule. In contrast, it is likely that the timing of Ottawa mediations is influenced less by the Rule and more by the specific requirements of the case, and the practices of the lawyers involved are adjusted accordingly.
- Perceptions of mediators, litigants and lawyers about the impact of Rule 24.1 on timing issues were generally positive.

More specific responses on the timing of the mediations included:

- Generally, litigants in both cities were more likely to feel that the mediation should *not* have been held later. This feeling was felt much more strongly in Ottawa (73% opposed to later vs. 9% in agreement to later) than in Toronto (47% vs. 31%).
- A solid 73% of Ottawa litigants and 60% of Toronto litigants agreed with the statement, "One of the benefits of mandatory mediation was that it required parties and their counsel to begin negotiations earlier than would otherwise have been the case."

- Lawyers in Toronto were more likely to feel that the mediation should have been held later (54%, vs. 35% who disagreed), while Ottawa lawyers supported the existing timing by three to one (66% vs. 22%).

A majority of mediators in both cities felt that it would have had a harmful impact if examinations for discovery had taken place before mediation began.

However, despite the above overall positive perceptions, a minority (but not insignificant) proportion of respondents to our questionnaires did express negative views regarding the appropriateness of early mediation for some types of cases. This position was also expressed by a minority of participants in the focus groups (especially lawyers in Toronto).

Recommendations regarding timing provisions of Rule 24.1

Given the positive impact of Rule 24.1 on the pace of litigation, and given the current progress of the vast majority of cases within the existing time standards, **it is recommended that:**

R 7. The time standards not be lengthened.

Given the different results of mandatory mediation from case type to another (found here and throughout the report), **it is recommended that**:

R 8. Any analyses of the impact of mandatory mediation present results separately for different types of cases.

Since a majority of litigants, lawyers and mediators are generally satisfied with the timing provisions of the Rule, but since a minority but still sizeable proportion have negative views about the timing provisions in particular cases, **it is recommended that:**

R 9. Further analysis and investigation be undertaken to better understand the situations in which negative views about the timing provisions of the Rule are more prevalent.

R 10. Steps be taken to better inform mediators, litigators and lawyers about the demonstrated generally positive impact of Rule 24.1 on time to disposition.

R 11. Lawyers and litigants be made more widely aware of provisions in the Rule for obtaining an extension in the time for mediation. At the same time, there should be continuing development of clearer policies and guidelines regarding situations under which extensions would be beneficial or inappropriate, so that the granting of extensions reinforce rather than subvert the Rule's purpose: the expeditious and inexpensive disposition of civil cases.

1.4.3 The Costs of Mediated Litigation

Developing a full understanding of the impact of Rule 24.1 on legal costs is a task far beyond the resources and information available to the current project. Nonetheless, Chapter 4 makes an important beginning.

Key findings regarding costs

The initial overall conclusion of the analysis undertaken within this evaluation is quite clear: when cases settle at or soon after the mandatory mediation, litigants save a substantial amount of money. The responses to questionnaires supported the conclusion that early mandatory mediation reduces costs. The response from focus groups was positive but not as strong.

With respect to the focus groups:

- Lawyers participating in the Ottawa focus groups were convinced that mandatory mediation reduces costs for litigants, even in cases which do not settle at mediation.
- Lawyers in the Toronto focus groups were less positive, and while many comments were similar to those made in Ottawa, Toronto lawyers were more likely to stress the anticipated *increases* in costs in cases which do not settle at mediation. For a significant proportion of the Toronto bar, mandatory mediation is still problematic, its overall advantage unproven.
- The costs of mediation were reported as higher in Toronto than in Ottawa.

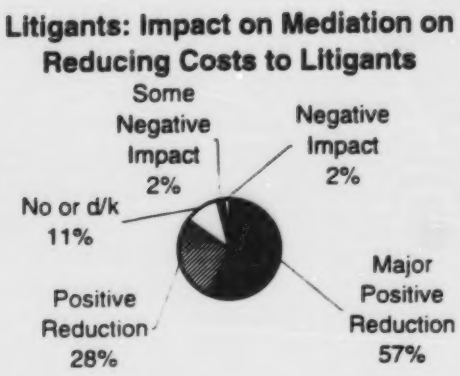
As shown in Figure 1.2 however, as with the results on timing, responses to the questionnaires [2] were considerably more positive than those emanating from the focus groups in Toronto.

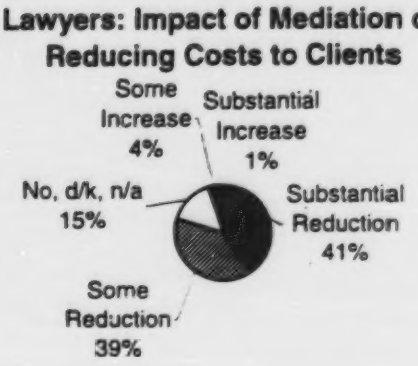
Responses from litigants indicated that in 85% of these cases, mediation was assessed as having a positive impact on reducing costs to litigants – and in 57%, a "major" positive impact.

- Responses from lawyers were similar, suggesting positive impacts in 78% of Toronto cases, (including 34% "substantial" positive impact) and 80% of Ottawa cases, (including 51% "substantial" positive impact).
- In only 2% of Ottawa cases and 7% of Toronto cases, lawyers believed mediation had led to a negative cost impact for their clients.

[2] (Submitted by lawyers and litigants in the subsample of mediated cases finally disposed under the Rule)

Figure 1.2 [3]


Litigants: Impact on Mediation on Reducing Costs to Litigants
Some Negative Impact 2%
Negative Impact 2%
No or d/k 11%
Positive Reduction 28%
Major Positive Reduction 57%


Lawyers: Impact of Mediation on Reducing Costs to Clients
Some Increase 4%
Substantial Increase 1%
No, d/k, n/a 15%
Substantial Reduction 41%
Some Reduction 39%

- Lawyers' estimates of the amount of savings in legal costs to litigants suggested that in over a third of the cases (38%), the cost savings were in excess of $10,000 (including 8% estimated at over $30,000). In another third (34%), savings were estimated at $5000 or less. The remaining 28% fell in between.
- Conservative calculations indicate that a net savings to litigants in both Ottawa and Toronto courts will emerge from the Mandatory Mediation Program.

The evaluation also explored one indicator of the cost of the mediation session: the duration of the mediation.

- Mediations which require more than one session are rare (2-4%).
- Mediations which require more than three hours (after which the
- generally lower "tariff" rate for mediators is replaced by private rates, assuming the parties wish to pay for it) make up 44% of Ottawa and 35% of Toronto mediations.
- Mediations that take longer than three hours are more likely to result in a complete settlement.

Recommendations regarding costs

Similar to the results for timing, perceptions regarding the impact of Rule 24.1 on costs are to some extent at odds with empirical data on actual costs. Therefore, **it is recommended that:**

R 12. Currently available data (e.g. the results of this study) be made widely available -- especially to the Toronto bar.

R 13. Special efforts be made to work with members of the Toronto bar to develop empirical data that better inform and address their concerns regarding the negative impacts of mediation on the costs of litigation.

[3] In this and later Figures, "d/k" means "do not know".

R 14. Results of the above work be used to design and secure funding for a more detailed study to obtain more comprehensive data on the costs associated with civil litigation. This study would not only help understand mandatory mediation (and how its timing affects litigation cost), but also address other issues of access to civil justice.

1.4.4 The Impacts of Rule 24.1 on Dispute Resolution Outcomes

Chapter 5 deals with the impact of mediations under the Rule on various outcomes of the litigation process.

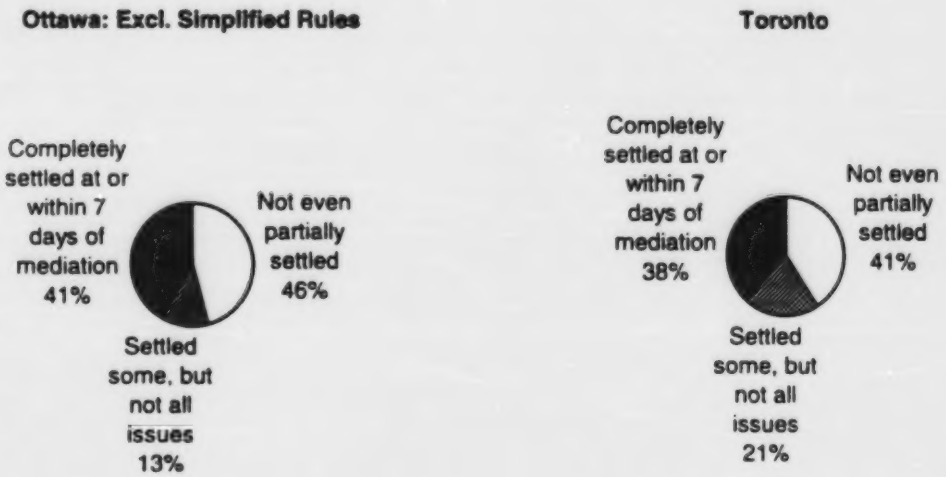
Key findings regarding the settlement of cases

The evaluation focuses on whether or not a complete settlement is achieved earlier in the litigation process through mediation under the Rule.

The main findings are that:

- In both Ottawa and Toronto, a significant proportion of cases – about four out of every ten – are completely settled at or within seven days of mediation.

Figure 1.3


Ottawa: Excl. Simplified Rules
Completely settled at or within 7 days of mediation 41%
Not even partially settled 46%
Settled some, but not all issues 13%
Toronto
Completely settled at or within 7 days of mediation 38%
Not even partially settled 41%
Settled some, but not all issues 21%

- Comparison of rates of settlement for "pre-Rule 24.1 Control Group" cases and cases mediated under the Rule found that Rule 24.1 has had a significant impact on the percentages of Toronto cases that are completely settled early on (i.e. within three and six months) in the litigation process. This positive impact of the Rule was observed in all ten of the case types examined.
- The rates of complete and partial settlement are very close in both Toronto and Ottawa.
- The speed at which Toronto achieved results similar to Ottawa's, which had two years prior experience under a Practice Direction, attests to the ability to establish an effective program with a very short learning period.
- On the other hand, the mediations also resulted in neither a complete nor a partial settlement in about four out of every ten cases in both Ottawa and Toronto.

More specific results include:

- There are considerable variations in settlement rates at mediation for different case types. Relatively high complete settlement rates were exhibited by wrongful dismissal cases (47%) in Toronto, and by wrongful dismissal, negligence, Simplified Rules and real property cases (50% to 54%) in Ottawa. Relatively low likelihoods of complete settlement were found for medical malpractice, real property and contract/commercial cases (16% to 33%) in Toronto, and for contract/commercial, collection and trust and fiduciary duties cases (21% to 36%) in Ottawa.

- Bivariate analysis of the factors which may influence the settlement outcome revealed the following statistically significant differences:
    - Roster and non-roster mediators had a similar likelihood of reaching a complete settlement, but roster-led mediations were more likely than non-roster mediations to resolve some (but not all) the issues;
    - Mediations were significantly more likely to result in complete settlement if the mediator was selected by the parties, rather than assigned by the local coordinator;
    - Mediations involving six or more named plaintiffs or defendants were less likely to result in a complete settlement;
    - Mediators who did more Rule 24.1 mandatory mediations during the evaluation period were more likely to facilitate a complete or partial settlement in any given case.

However, a multivariate analysis determined that:

- The variable that was most effective in predicting whether neither a complete nor partial settlement occurred at mediation was "the number of Rule 24.1 mediations conducted during the two years of the program by the mediator in the case". As the Rule 24.1 experience of the mediator increased, the likelihood of the mediation resulting in neither a complete nor partial settlement decreased. (The evaluation focused on cases that resulted in "neither a complete nor partial settlement" since it was those cases that were likely to demand adjustments (if any) to the Rule.)
- Further, after the Rule 24.1 experience of the mediator was taken into account, different sets of variables had a statistically significant impact on identifying groups of cases that had different likelihoods of neither a partial nor complete settlement. Variables that did prove useful in identifying significantly different rates of no settlement (but only for specific groups of cases) included: case type, whether or not the mediator was a roster or non-roster mediator, and the city of the mediation (i.e. Ottawa or Toronto).

Findings regarding partial settlements

The chapter also explored the types of issues resolved in "partially settled cases". Findings included:

- In both Ottawa and Toronto, in partially settled cases, less than a majority of lawyers and litigants indicated that the mediation had made progress for every type of substantive issue considered.
- However a substantial proportion indicated that progress had been made in resolving issues such as: types of damages that were recoverable, amount of damages, assignment of liability and determination or clarification or resolution of the important facts.
- Lawyers and litigants had similar assessments of progress made on specific issues. However, mediators' assessments of progress were typically more optimistic.
- It appears that parties and counsel in Ottawa are more likely than their Toronto counterparts to include a more complete list of the relevant issues in their Statement of Issues. (Alternatively, it is possible that Toronto mediators are more likely to expand the discussion past the Statement of Issues.)

Findings regarding other outcomes

Other types of outcomes of mandatory mediation were also explored.

- A majority of mediators in both cities reported an impact on such areas as providing one or both parties with new, relevant information; identifying important matters; setting priorities among issues; developing a process for dealing with the remaining issues; and achieving a better awareness of the potential monetary savings from settling earlier in the litigation process.
- Fewer but still a substantial portion of litigants also reported an impact on certain secondary outcomes.

Findings regarding overall satisfaction with outcomes

Finally, participant satisfaction measures were obtained from litigants and lawyers, which for the most part were positive.

First, on the overall value of the Rule:

- Lawyers and litigants were more likely to feel that their own case had been suitable for mediation (79% in Ottawa and 61% in Toronto) – although those in agreement were less prominent in Toronto (with 24% feeling that their case was not suitable for mediation).
- A particularly thought-provoking finding was that 42% of Toronto mediators felt that the likely impact if "this type of case had been excluded" from mandatory mediation would be "some improvement" in narrowing issues or reaching settlement.
- A minority but still substantial number of lawyers and litigants expressed concern with the quality of the outcome of the mediation. These concerns were especially prominent in Toronto. For instance, 33% of the responses from Toronto lawyers disagreed with the statement that "justice was served by this process."
- However, a substantial majority of litigants and lawyers (more in Ottawa) indicated satisfaction with the overall mandatory mediation experience and said they would use it again if they had a choice in the matter.
- In all types of cases, more litigants and lawyers agreed than disagreed with the statements "Justice was served by this process" and "The settlement was fairer than without mandatory mediation".

Recommendations regarding outcomes

Rule 24.1 has resulted in a number of benefits related to the settlement of cases and to other case outcomes. However, for a substantial proportion of cases, many of these benefits are not perceived to be present. This balance of results is reflected in the following **recommendations:**

R 15. The demonstrated positive contribution of Rule 24.1 mediations to the resolution of disputes in roughly six out of every ten cases should be broadly communicated.

R 16. Indicators of the impact of mediation on litigation outcomes must adopt a broader scope than simply "complete settlement". Such indicators should also capture other demonstrated benefits such as settlement of certain types of issues as well as the other specific benefits discussed in the text.

R 17. Further research is required to identify more clearly the factors that are associated with the lack of a complete or partial settlement in four of every ten cases.

R 18. Further research is also required to identify more clearly the factors that determine why a minority, but still substantial proportion, of lawyers and litigants (particularly in Toronto) have negative views regarding the impact of mediation on issues such as "achieving a result that is fair" and "ensuring that justice was served by the mediation process." Results could inform initiatives to extend the Rule and to evaluate its effects in other locations.

R 19. The importance of "prior Rule 24.1 mediation experience" in predicting whether or not a mediation leads to at least a partial settlement strongly suggests the importance of revisiting the criteria for acceptance of mediators to the roster – and the importance of various forms of mediator training.

R 20. Clarification and enhanced education is needed (especially in Toronto) regarding the types of issues that should be included on the Statement of Issues. This should be part of broader education efforts that need to accompany any expansion of mandatory mediation.

1.4.5 The Mediation Process and Procedures

Chapter 6 addresses selected issues related to the processes and procedures that support the day-to-day operation of the Rule.

Key findings regarding the mediation process and procedures

The first section of Chapter 6 considers the abilities of the mediator and the mediation process. Findings include:

- Regarding the mediator and the process of mediation, a majority of litigants in both cities (but fewer in Toronto) gave positive ratings to mediators' overall skills in:
  - moving the parties towards an agreement,
  - ability to understand the facts and the legal issues, and
  - degree of involvement in determining the outcome.
- Mediators' ability to address power imbalances between the parties was less positively rated.
- Lawyers' ratings of mediators in both cities closely paralleled those of the litigants, again with Ottawa lawyers generally more positive.

The second section of the chapter addresses issues related to the adequacy of information available at and about mediations. Findings included:

- In response to most case-specific questions, a strong majority of litigants, lawyers and mediators said that lack of information was not a problem.
- More Toronto than Ottawa litigants would have liked to receive more initial information about the mediation process.
- The problem of at least one of the parties at the mediation not having the authority to reach an agreement was more common than one might hope – 15% of Ottawa lawyers' responses and 18% of Toronto lawyers' responses indicated this was a problem.

The focus groups and interviews also considered issues related to the process for selection, training and monitoring of mediators.

- Many participants felt that the criteria and process for acceptance of mediators onto the roster should be made more rigorous.
- Some lawyers wanted more information to be made available on the background and experience of individual mediators.
- There was support for professional development programs for mediators.
- Opinions differed in Toronto and Ottawa with respect to the need for specialized mediator panels. The idea had more acceptance in Toronto than in Ottawa.

The chapter concluded with a discussion of issues and processes surrounding the administration of the program.

- Mediator activity in Ottawa is highly concentrated; while 97 mediators have conducted at least one mediation there, four mediators have completed 49.8% of the total.
- Mediator activity is more dispersed in Toronto, where the ten busiest mediators conducted just over one-third of the completed mediations.
- There is evidence of growth in the inventory of defended cases that have not yet been mediated. This growth in pending mediation cases is more evident in Ottawa.
- Particularly important comments were made in focus groups and interviews regarding the critical role played by the Local Mediation Coordinator in ensuring the effective operation of the program – and the need to ensure that the coordinator function is adequately resourced.

Recommendations regarding mediation processes and procedures

In light of findings set out in Chapter 6, **it is recommended that:**

R 21. Consideration be given to addressing the causes and possible solutions to the problem of parties at the mediation who do not have the authority to settle.

R 22. Lawyers and mediators be advised of the finding that over a quarter of litigants would have liked to have one or more parties supplied with more information about the costs and benefits of proceeding further in the court process.

R 23. The Ministry of the Attorney General consider ways in which it could assist members of the Toronto bar to become better acquainted with mediators in Toronto.

R 24. Distribution of the public information brochure be mandatory in all cases.

R 25. The Ministry of the Attorney General conduct a review of the appropriate resourcing for the Local Mediation Coordinator's offices.

R 26. Further research be undertaken on the granting of extensions.

R 27. The size of inventories of pending mediation cases – and the potential causes of any continued significant growth -- be monitored on an ongoing basis to ensure the effectiveness of the Rule.

R 28. The Ministry of the Attorney General convene a meeting of members of the two Local Mediation Committees and program staff to enable them to share ideas about "best practices" for program start-up, as well as issues related to selection, training, professional development opportunities, monitoring of mediators -- and other key issues related to attracting and maintaining the appropriate quality of mediators on the roster.

R 29. Since the evaluation process has brought together lawyers, mediators, litigants and court officials within a process that has developed valuable information for understanding and improving Rule 24.1 and the mediation program, both the ministry and the Civil Rules Committee ensure that mechanisms are set up to maintain and enhance this process of continuous monitoring, analysis and improvement.

1.4.6 Report Appendices

The report is completed with 3 Appendices:

- Appendix A
  - contains Tables containing detailed statistical information to support the analyses in the main body of the report.
- Appendix B
  - contains detailed descriptions of each of the main data sources that provided valuable information to inform the analysis.
- Appendix C
  - contains copies of the Mediator's Report filled out for each mediation under Rule 24.1, and the Evaluation Forms filled out by mediators, litigants and lawyers in each of a large sample of those mediations.

Chapter 2: Caseflow: From Claim to Mediation

2.1 Introduction

This chapter begins with an operational case flow context for analyzing findings about cases that are part of the Mandatory Mediation Program in Ottawa and Toronto. The second part of the chapter then provides specific information on the volumes and characteristics of cases that have been mediated under Rule 24.1.

This context information is important for a number of reasons:

- First, the numbers and types of cases that enter the mediation program per se are determined by the volume and nature of certain events that occur earlier in the litigation process. Understanding trends in these prior events will be important to understanding whether descriptions of current mediation events are likely to change in the future.
- Second, the introduction of mandatory mediation could have an impact on those earlier events. For instance, more cases might be commenced and more cases might be defended if mediation is seen as providing a speedier, cheaper and/or fairer alternative to traditional litigation. Monitoring the level of those prior events is therefore an important component of the evaluation.
- Third, without an understanding of differences in the volume and mix of cases that could and do become eligible for mandatory mediation in Ottawa and Toronto, it would be impossible to determine whether differences in the results found in the two cities are attributable to differences in the mix of cases or to differences in the manner in which the Rule 24.1 is implemented in the two cities.
- Fourth, an understanding of the characteristics of cases mediated under Rule 24.1 provides important information for deciding what types of analysis are appropriate in later chapters, and for analyzing the reasons for possible variations in impacts related to timing, costs and outcome.

The remainder of the chapter is divided into three sections:

Section 2.2:

- Cases included and excluded from consideration for mandatory mediation under Rule 24.1
- The overall case-managed civil caseload in Ottawa and Toronto
- The defence rates for those cases, and
- The resulting volume and case mix of defended cases in Ottawa and Toronto.

Section 2.3:

- The current status of cases within the Mandatory Mediation Program.

Section 2.4:

- The number and nature of mediations that have been conducted and reported on thus far in Ottawa and Toronto
- Key characteristics of those mediated cases.

2.2 Case-Managed Cases Commenced, Defended and Eligible for Mandatory Mediation

2.2.1 Types of Cases Included in and Excluded from Rule 24.1

In Ottawa, over 90% of civil non-family cases are case managed – the principal exception being construction lien cases, which would otherwise make up roughly 5% of the civil caseload.[4] All of these cases are subject to the Mandatory Mediation Program.

In contrast, only a fraction of Toronto's civil cases fall within case management. Toronto's experiment with case management began in 1991 and included only 10% of its civil claims, expanding the proportion to 25% in mid-1997 (Ottawa moved to full case management in January 1997). As in Ottawa, construction lien cases are excluded. Unlike Ottawa, however, Toronto has developed a specialized Commercial List, and those cases are also excluded.

The largest difference between Toronto and Ottawa is Toronto's exclusion of all civil cases covered by Rule 76,[5] the new Simplified Procedure required in all claims under $25,000 beginning early in 1996. Rule 76 cases constitute some 27% of all civil claims filed in the Superior Court in Toronto.[6] (The proportion is higher in Ottawa--just over 30%.) Thus, although Toronto has moved to 25% case management, it excludes a number of cases from mandatory mediation. As a result, while one out of every four eligible claims is chosen for case management, those case-managed cases account for approximately 16% of all civil claims in the Superior Court in Toronto.

Theoretically, that 16% should still be representative of the whole universe of eligible civil claims in Toronto, since cases are randomly assigned to case management status. In practice, however, representativeness may be problematic. Anecdotal evidence persists that counsel who wish to avoid case management are able to do so, either by avoiding selection at the counter when documents are filed, or by transferring cases to other centres in the Greater Toronto Area. Nevertheless, while those interpreting findings on Toronto's case-managed cases should bear this in mind, it is highly probable that these occurrences are too infrequent to have an impact on most of the aggregate data used in this report.

2.2.2 A Different Mix of Cases Commenced in Ottawa and Toronto

Where the differences in the case management rules are important is in their impact on the mix of cases in the two pilot project cities. For example, as shown in Figure 2.1, for cases commenced in the two years since the introduction of Rule 24.1:

---

[4] There are other exclusions from case management in Ottawa, but they cover only a small number of claims. Some civil matters such as solicitor/client assessments are excluded because they do not proceed by way of statement of claim.

[5] Pursuant to a practice direction from Regional Senior Justice Susan Lang, July 4, 1997.

[6] Rule 76 cases were excluded in Toronto because they were subject to their own evaluation and concern was expressed that that evaluation would be compromised if mandatory mediation was introduced.

- Simplified Rules cases (the most prominent case type in Ottawa) comprise 27% of the cases commenced in Ottawa vs. 0% in Toronto – meaning that the 27% of the cases in Ottawa that are for amounts between $6,000 and $25,000 have no counterparts among the mandatory mediation cases commenced in Toronto.
- Motor vehicle cases (the most prominent case type in Toronto) comprise more than twice the proportion of cases in Toronto as they do in Ottawa (27% as against 11%)
- Negligence cases also account for nearly double the proportion of cases in Toronto as they do in Ottawa (11% vs. 7%).

The differences in case mix become important in the evaluation of mandatory mediation to the extent that the timing and outcomes of mediation may vary among different types of cases. For example, some counsel suggest that mandatory mediation under Rule 24.1 will be less fruitful in personal injury cases because it occurs early in the litigation process (typically before discovery). This suggestion can be tested against actual mediation outcomes, but only if case types are taken into account. Furthermore, if the type of case does make a difference in the outcome of mediations, the different case mix in Ottawa and Toronto may generate different overall outcomes (e.g. percentage of mediations that result in settlement) from one city to another.

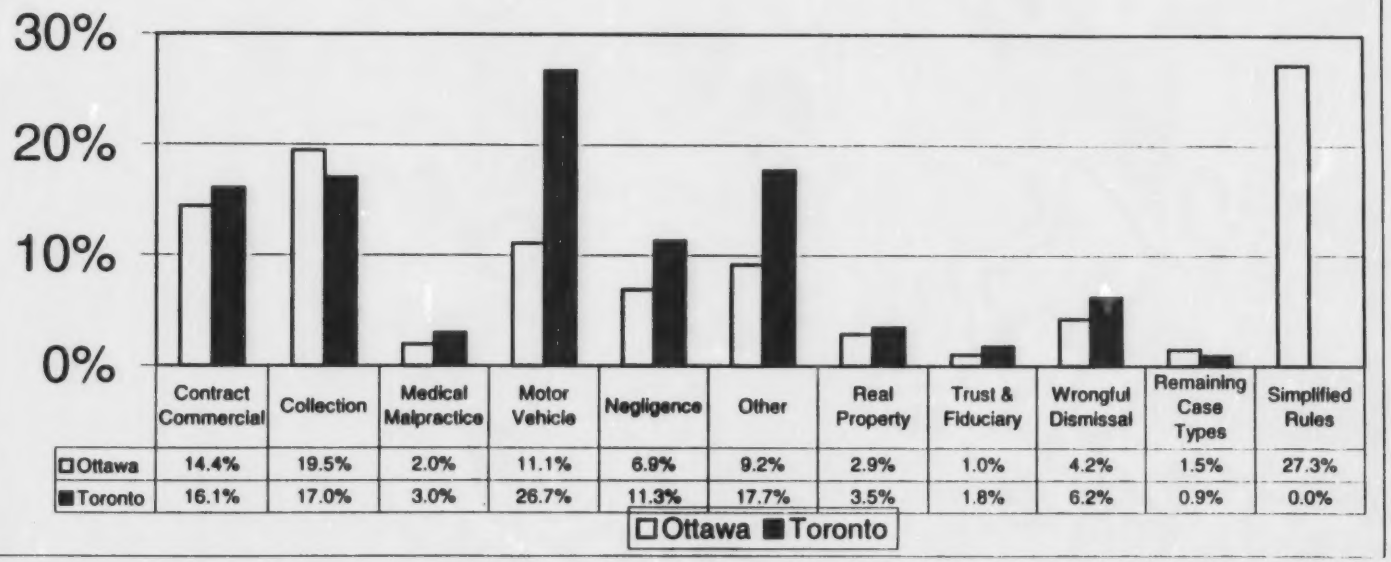
2.2.3 Trends in Cases Commenced over Time

Are any trends visible in the number of case-managed cases commenced in Ottawa and Toronto? Yes. In fact, the main overall trend is a noticeable decline in claims filed, particularly in the last half of 1999. In Ottawa, for example, case-managed claims declined from 3,392 in 1997 to 3,181 in 1998 to 2,748 in 1999, a decline of 19% from 1997 to 1999 and 14% from 1998 to 1999 alone. In Toronto, case-managed claims declined from 3,457 in 1998 to 2,869 in 1999, a one-year drop of 17%.

In both locations, claims fell in the second half of 1999 to below what they were in the first half of 1999, suggesting that the decline is not a reflection of changes in litigation when mandatory mediation first began. Thus, for example, there is no evidence that Toronto plaintiffs filed more cases at the end of 1998 or at the beginning of 1999, depending upon whether they wanted to avoid or take advantage of mandatory mediation. One reviewer wondered whether the fall-off in the second half of 1999 could indicate that plaintiffs are avoiding Rule 24.1 after their experience in the first half of 1999. This too seems unlikely, since declines in filings occurred not only in Toronto but also in Ottawa, where a similar form of mediation had already been operating for two years under a local practice direction. A review of the volume of claims filed in the first eleven months of the year 2000 in Toronto and Ottawa shows a continuing but smaller decline than in the previous year.

An examination of trends in claims filed in other major Ontario court centres could further inform this analysis. At the same time, it would be impossible to tell even from a full set of Ontario figures whether a decline in civil cases reflects for example the state of the economy or reduced public interest in resolving private disputes through judicial processes.

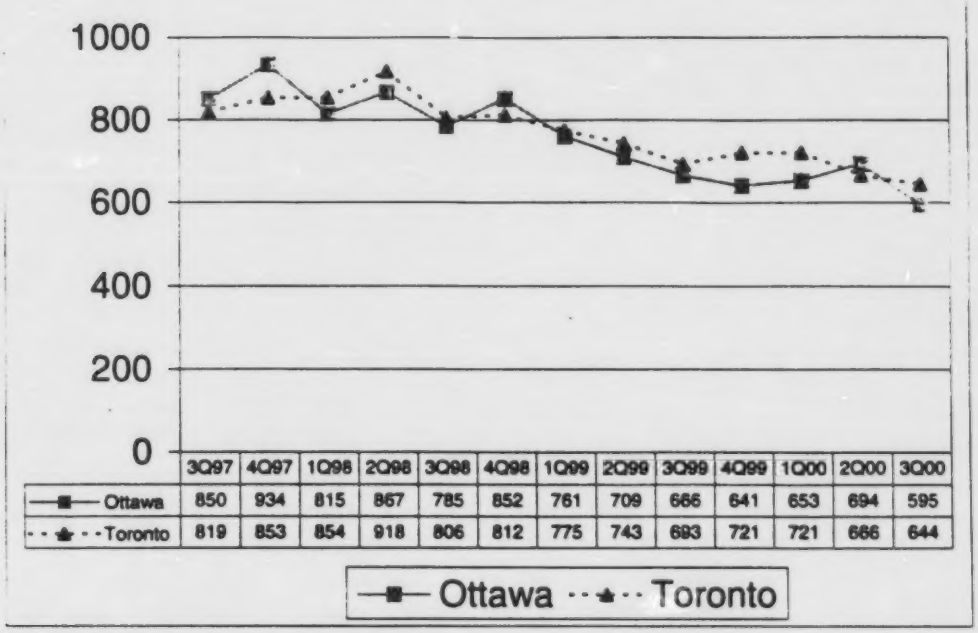
Figure 2.1: Distribution of Cases Commenced in 1999 and 2000 by Case Type: Ottawa vs Toronto



	Contract Commercial	Collection	Medical Malpractice	Motor Vehicle	Negligence	Other	Real Property	Trust & Fiduciary	Wrongful Dismissal	Remaining Case Types	Simplified Rules
Ottawa	14.4%	19.5%	2.0%	11.1%	6.9%	9.2%	2.9%	1.0%	4.2%	1.5%	27.3%
Toronto	16.1%	17.0%	3.0%	26.7%	11.3%	17.7%	3.5%	1.8%	6.2%	0.9%	0.0%

We also hesitate to do this kind of interpretation because Ministry statistics for "Civil Proceedings Initiated (excluding landlord & tenant)" in Toronto show a 15% increase from 1999 to 2000, with an average number of proceedings initiated per month that is higher than any monthly average since 1996.[7] Those figures include between 6,000 and 10,000 matters per year filtered out of the Sustain data on civil cases (i.e. claims and actions) reported in Table A2.1b in Appendix A.

Figure 2.2: Trends in Cases Commenced: Ottawa & Toronto



	3Q97	4Q97	1Q98	2Q98	3Q98	4Q98	1Q99	2Q99	3Q99	4Q99	1Q00	2Q00	3Q00
Ottawa	850	934	815	867	785	852	761	709	666	641	653	694	595
Toronto	819	853	854	918	806	812	775	743	693	721	721	666	644

2.2.4 Defence Rates

Trends in defence rates are important for an evaluation of the introduction of Rule 24.1 since the introduction of mandatory mediation could result in changes to the costs and therefore the willingness of parties to commence and/or defend cases -- and therefore to changes in the rates of defence.

Data combining all types of cases implies that one of the differences between Ottawa and Toronto is the rate at which case-managed civil claims are defended in the two courts. The overall defence rate is higher in Toronto (67%) than in Ottawa (53%).[8] Both of these

[7] Based on CISS Reports used by the office of the Regional Senior Justice in Toronto.
[8] See Figure A.2.2.

percentages are higher than for non-case-managed cases,[9] suggesting that case management leads defendants to file a formal response more frequently than would have been the case otherwise.

The Ottawa-Toronto differences in defence rates could signal different patterns of litigation in the two centres that might lead to different outcomes at the stage of mandatory mediation. For example, it might mean that counsel in Ottawa are more likely to initiate settlement discussions before a statement of defence is filed.

In fact, however, this hypothesis is not supported by the data on defence rates once those rates are broken down by case type (i.e. as in Figure A2.3 in Appendix A). It turns out that the defence rate calculated using all case types combined is misleading since only Ottawa cases include Simplified Rules cases -- and Simplified Rules cases in Ottawa are defended at a rate (40%) considerably below the average over all case types (53%). Since Simplified Rules cases account for roughly one quarter of the Ottawa cases, their inclusion in the overall totals lowers the average for all case types considerably – and accounts for a large part of the Ottawa-Toronto differences.

There is also a significant difference between the defence rate of 24% for collection cases in Ottawa and the rate of 40% in Toronto.[10] With these two exceptions, there is no meaningful variation between defence rates in Ottawa and Toronto for most case types. For example,

- Motor vehicle cases (73% in Ottawa vs. 75% in Toronto),
- Contract/commercial cases (73% and 73%),
- Negligence cases (77% vs. 75%), and
- Wrongful dismissal cases (90% vs. 88%).

In short, with the possible exception of collection cases, any differences in litigation practice between Ottawa and Toronto are not reflected in the likelihood that civil claims will be defended.

Another very important fact illustrated by the rates shown above is that there are substantial differences in defence rates from one case type to another.

2.2.5 The Mix of Defended Cases Proceeding to Mandatory Mediation

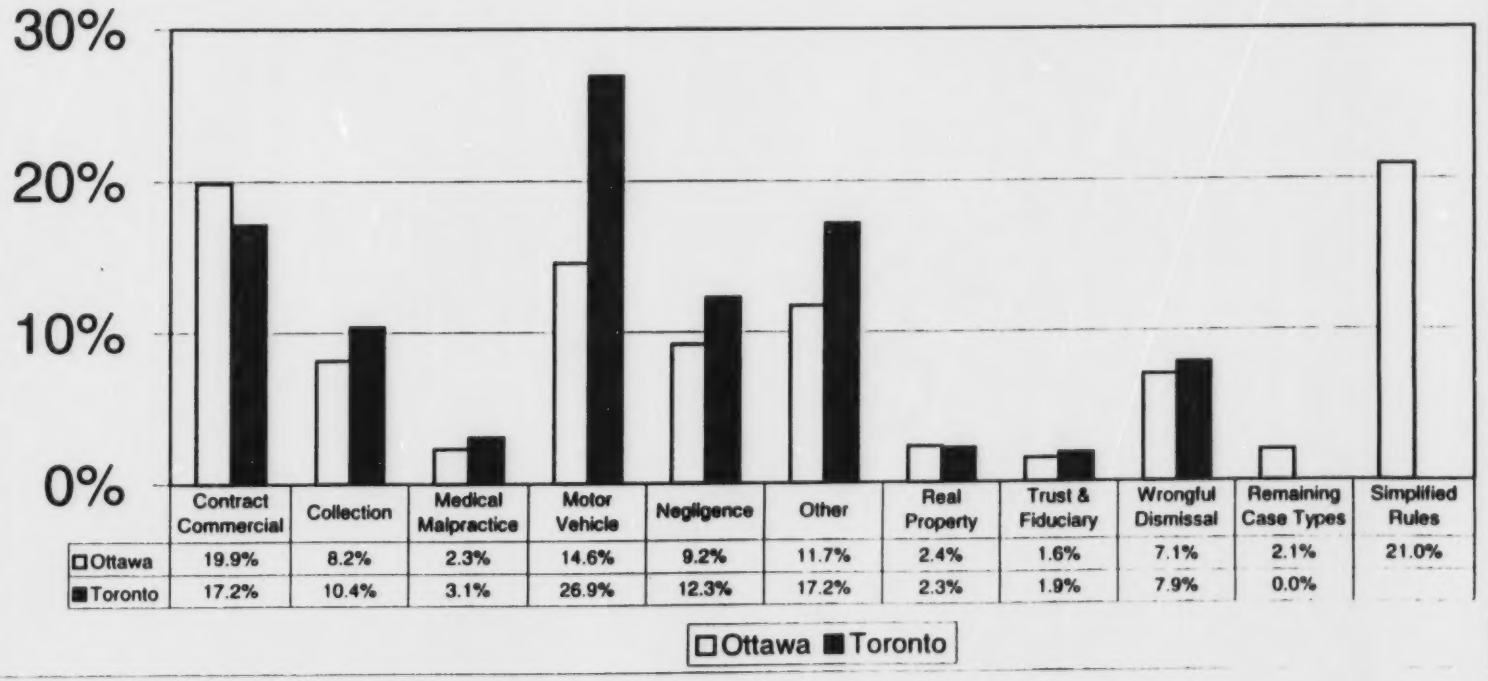
Figure 2.3 displays the distribution of defended cases by case type.

---

[9] Based on expectations of court officials and rules of thumb adopted by the Civil Justice Review, as well as comparison with findings in Court Reform Task Force, Ontario Ministry of the Attorney General, The Bottom Lines (June 1990).

[10] See Figure A.2.3 for the percentages reported here and in the next paragraph.

Figure 2.3: Distribution of Cases Defended in 1999 and 2000 by Case Type: Ottawa vs Toronto



	Contract Commercial	Collection	Medical Malpractice	Motor Vehicle	Negligence	Other	Real Property	Trust & Fiduciary	Wrongful Dismissal	Remaining Case Types	Simplified Rules
Ottawa	19.9%	8.2%	2.3%	14.6%	9.2%	11.7%	2.4%	1.6%	7.1%	2.1%	21.0%
Toronto	17.2%	10.4%	3.1%	26.9%	12.3%	17.2%	2.3%	1.9%	7.9%	0.0%	

Differences in defence rates from one type of case to another mean that the defended case-managed cases that have gone to mandatory mediation since the program began on January 4, 1999, may not resemble the overall mix of civil claims commenced.[11] For example, because of their relatively low defence rates:

- Simplified Rules cases in Ottawa fell from the 27% of cases commenced shown in Figure 2.1 to the 21% of cases defended shown in Figure 2.3, and collection cases, that accounted for 20% of the cases commenced in Ottawa, made up only 8% of the cases defended.

In fact, while we feared that differences in the mix of cases commenced would make it difficult to compare overall results in Ottawa and Toronto, these differences become less problematic when the mix of defended cases is considered instead.

At the same time, differences still persist. Motor vehicle cases still account for the highest proportion of defended cases in Toronto (27%), while they have a much smaller share of the Ottawa cases (15%); conversely, contract/commercial cases now have a slightly larger share of the civil caseload in Ottawa than in Toronto. Thus to the extent that tort cases place different demands on early mediation than cases in which quantum is less problematic, the differences in case mix between Ottawa and Toronto could still produce different outcomes.

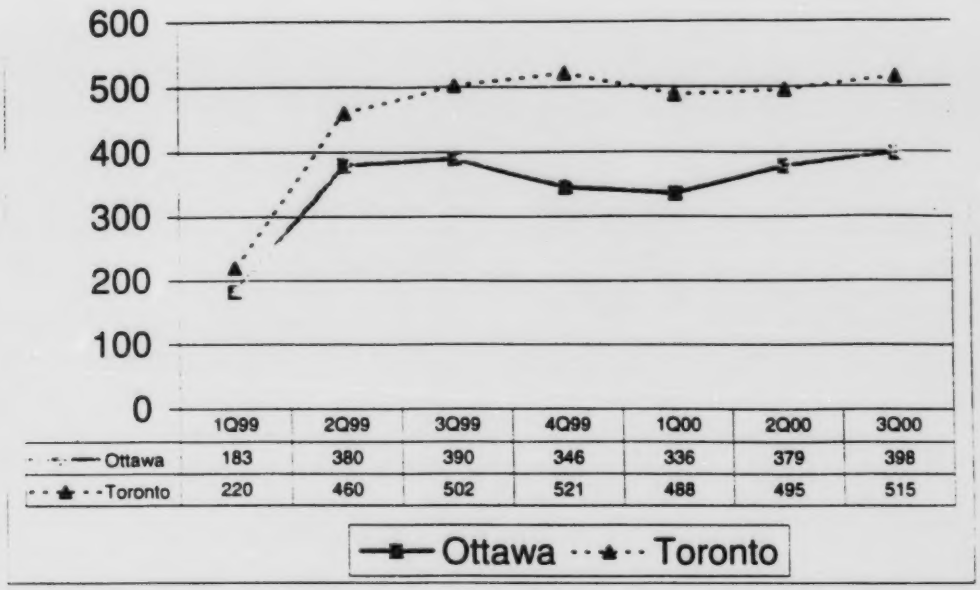
2.2.6 Trends in Defended Cases under Rule 24.1

Figure 2.4 presents the trends in Ottawa and Toronto in the number of defended case-managed cases subject to Rule 24.1. Because there is a time lag between the start of a claim and its defence, the number of defended claims grew during the first part of 1999, with the largest number of defences filed in the fourth quarter in Toronto, and in the third quarter in Ottawa. The number of defended cases (and therefore the likely initial workloads of the Mandatory Meditation Program) has remained fairly stable – or even grown slightly – during the second year of Rule 24.1.

Altogether, 57% of the 6212 defended case-managed cases eligible for mandatory mediation in 1999 and the first 11 months of 2000 were in Toronto, and 43% were in Ottawa. The relative proportions accounted for by Toronto and Ottawa were virtually identical in 1999 and 2000.[12]

[11] As shown in Figures A2.1a and A2.1b in Appendix A.
[12] See Figure A.2.4.

Figure 2.4: Trends in Cases Commenced & Defended in 1999 & 2000: Ottawa & Toronto



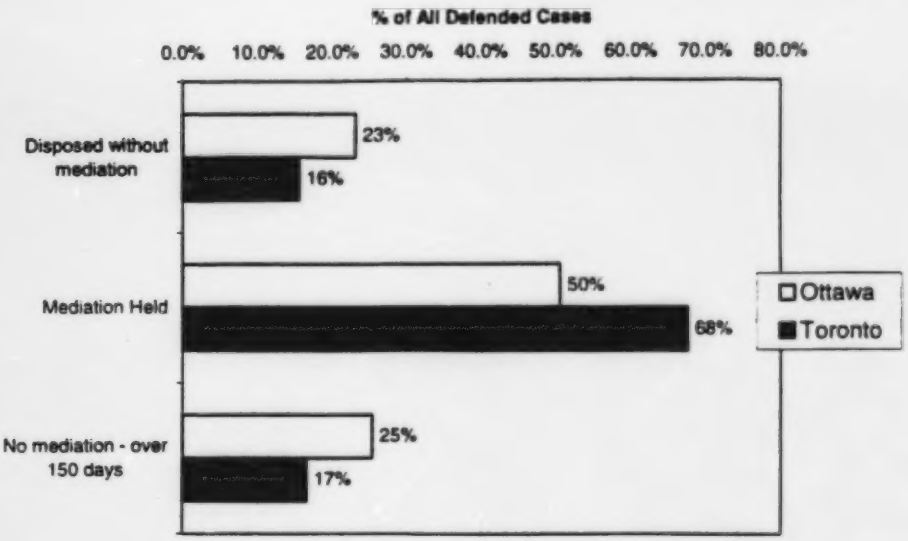
	1Q99	2Q99	3Q99	4Q99	1Q00	2Q00	3Q00
Ottawa	183	380	390	346	336	379	398
Toronto	220	460	502	521	488	495	515

2.3 The Mediation Status of Pilot Project Cases

How far have these defended cases proceeded with respect to mediation -- and are there differences between Ottawa and Toronto?

A detailed analysis of the current status of cases defended in each quarter since the inception of the pilot is shown in Figure A2.5 in Appendix A. Figure 2.5 in the text below summarizes key information from that figure. However, to ensure that sufficient follow-up time (i.e. at least 150 days) is allowed to capture events that are expected to happen before the main 90 day and 150 day time standards in Rule 24.1, Figure 2.5 is restricted to cases that have been defended before June 30, 2000.

Figure 2.5: Mediation Progress: Cases Defended prior to June 30, 2000



One of the most obvious observations from these figures is that the progress of pilot project cases has been different in Ottawa and Toronto. Mediations have been held in a larger proportion of cases (defended prior to June 30, 2000) in Toronto than in Ottawa (68 vs. 50%).[13] However, in part this is because a larger proportion of cases in Ottawa has been disposed of prior to mediation (23% compared with 16% in Toronto), thereby reducing the proportion of Ottawa cases in which a mediation would be required.

Nonetheless, the combined total of cases which were either completed before mediation or had a mediation is still larger in Toronto than in Ottawa (84% vs. 73%). Stated another way, Ottawa has a larger proportion of cases pending over 150 days with no mediation held (25% vs. 17%). Subsequent chapters will further explore possible reasons for this finding.

Although not shown in Figure 2.5, a small number of cases have been exempted from mandatory mediation. Between January 1999 and December 1, 2000, pilot project staff report 25 exemptions in Ottawa and 69 in Toronto. The higher number in Toronto reflects the practice in that court of exempting third- and fourth-party actions in cases where the main action is not subject to Rule 24.1, a situation that reflects the fact that case management has not yet been expanded in Toronto as it has been in Ottawa.

[13] See Figure A.2.5 for the percentages reported here and in the next paragraph.

2.4 Number and Nature of Mediations

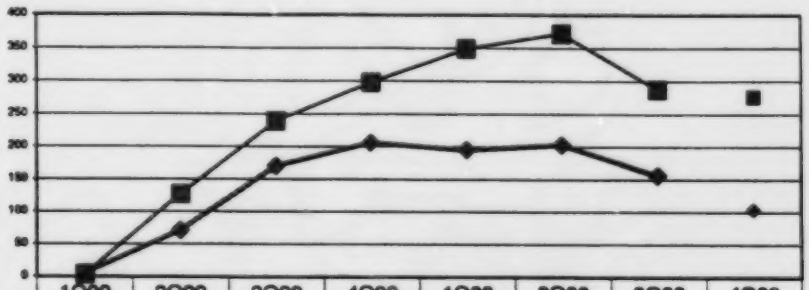
2.4.1 Trends in the Number of Mediations

During the first 23 months of the Mandatory Mediation Program, reports have been filed for 3,064 mediations, 1110 in Ottawa (36%) and 1954 in Toronto (64%).[14, 15] As shown in Figure 2.7, more mediations were held in each successive quarter of 1999, as more claims commenced in 1999 were defended.

In Toronto, this upward trend continued until the second quarter of 2000. However, the third quarter of 2000 saw a drop by about 25% -- although the levels for the first two months of the fourth quarter probably indicate that this downward part of the trend will be short-lived.

On the other hand, the initial upward trend in Ottawa ended with the fourth quarter of 1999. Since then, the number of mediations held fairly stable for two quarters before falling in the third quarter of 2000.[16]

Figure 2.7: Trends in Rule 24.1 Mediations Concluded: Toronto and Ottawa



	1Q99	2Q99	3Q99	4Q99	1Q00	2Q00	3Q00	4Q00
Ottawa	5	71	170	206	195	203	156	
Toronto	4	127	239	298	349	372	288	
Ottawa Oct, Nov 2000								104
Toronto Oct, Nov 2000								277

[14] The evaluation assumes that the number of mediations held under Rule 24.1 equals the number of mediator's reports filed. There is a ten-day period within which the mediator is required to file his/her report, so the number of mediations completed at a given point in time is likely to be slightly higher than the number of reports filed, but it appears (as noted in Chapter 3: Pace) that reports have been filed in all but a very small number of cases in which a mediation has been completed.

[15] It should also be noted that minor differences may occur in the estimates shown in different parts of this report for variables such as the number of cases commenced, defended, mediated, or the numbers of questionnaires returned. This would be expected given the way missing values are treated in the construction of statistical tables. For instance, when constructing a table of the number of mediations resulting in settlements by case type, all cases with missing data for settlement outcome and/or case type would be excluded from the table. Similarly, when constructing a table of the number of mediations resulting in settlements by city, all cases with missing data for settlement outcome and/or city would be excluded from the table. If different numbers of cases had data missing for case type and city, the numbers of cases in each table would differ accordingly.

[16] More detailed statistics for this and the next section can be found in Figure A.2.7 in Appendix A.

2.4.2 The Mix of Mediated Cases

Given that all defended case-managed cases are required to move promptly to mediation,[17] one would expect the percentage distribution by case type in the 3,064 completed mediations to be the same as the percentage distribution by case types in the defended cases eligible for mediation. A comparison of Figure 2.3 earlier and Figure 2.8 below shows this to be generally the case.

2.4.3 Other Characteristics of Mediated Cases

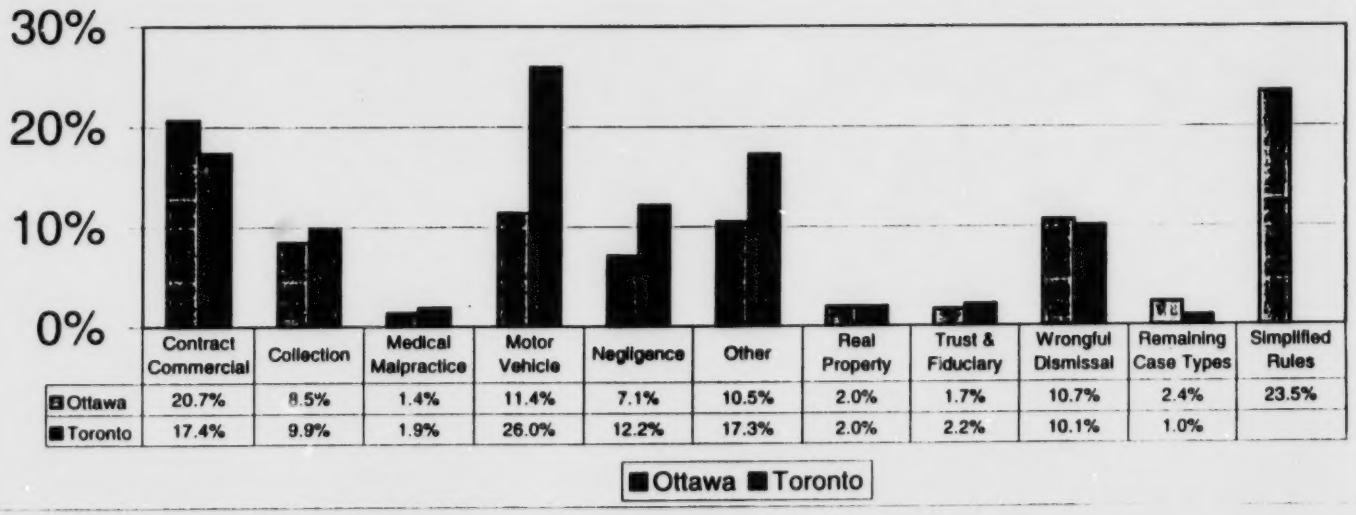
2.4.3.1 Selection or Assignment of Mediators

As shown in Figures A2.8 and A2.9 in Appendix A (and summarized in Figure 2.9 below), there are considerable differences between Ottawa and Toronto in the manner in which mediators are selected or assigned to cases. In Ottawa, the parties are far more likely than in Toronto to select the mediator themselves (82% vs. 53%). Put another way, Toronto parties are more likely to leave the selection of the mediator to the Local Mediation Coordinator. Unfortunately, it is not known whether this is because of a conscious strategic decision by Toronto lawyers to leave the selection of the mediator up to the Local Mediation Coordinator, or their lack of knowledge and experience in selecting a mediator, or simply missing the 30-day deadline for selecting their own mediator.

As shown in Figure A2.8 (in Appendix A), in Ottawa it was even less likely that the mediator would be assigned by the Local Mediation Coordinator in 2000 (14% to 19% of completed mediations) than in 1999 (20% to 24%). There was a similar decrease in Toronto in the likelihood that the mediator would be assigned by the Local Mediation Coordinator in 2000 (45% to 46% of completed mediations) compared to 1999 (48% to 50%) – although the likelihoods remained far above those for Ottawa.

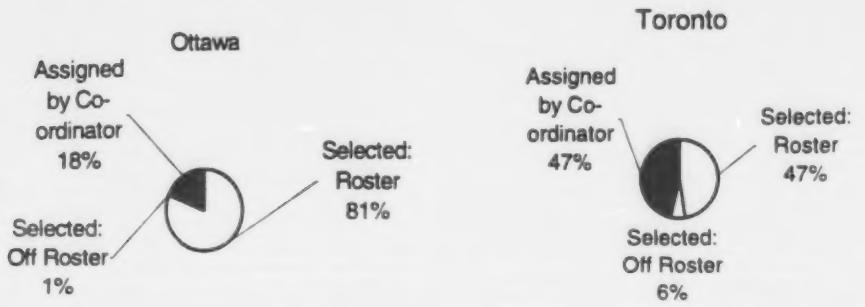
[17] Unless the parties postpone on consent or obtain a court order exempting them or extending the time.

Figure 2.8: Distribution of Rule 24.1 Mediations in 1999 and 2000 by Case Type: Ottawa vs Toronto



	Contract Commercial	Collection	Medical Malpractice	Motor Vehicle	Negligence	Other	Real Property	Trust & Fiduciary	Wrongful Dismissal	Remaining Case Types	Simplified Rules
Ottawa	20.7%	8.5%	1.4%	11.4%	7.1%	10.5%	2.0%	1.7%	10.7%	2.4%	23.5%
Toronto	17.4%	9.9%	1.9%	26.0%	12.2%	17.3%	2.0%	2.2%	10.1%	1.0%	

Figure 2.9: Process by which Mediators Are Connected to Case



As shown in Figure A2.9, in Ottawa, there was also considerable variation from one case type to another regarding the likelihood of having the mediator selected by the parties or assigned by the Local Mediation Coordinator -- with mediators being more likely to be assigned in collection cases (36%), real property cases (32%) and trust and fiduciary duties cases (37%). There was less variation by case type in Toronto.

2.4.3.2 Use of Non-Roster Mediators

Figure 2.9 also shows how frequently mediators were selected from among roster and non-roster mediators. Although 6% of mediators were selected from among off-roster mediators in Toronto, selection of off-roster mediators is very rare in Ottawa.

2.4.3.3 Number of Mediation Sessions

One mediation session remains the predominant pattern in both Ottawa and Toronto. Just over 2% of Ottawa mediations consist of two or more sessions, and less than 4% of Toronto mediations have more than one session -- although one Toronto mediator reported having six sessions.[18]

2.4.3.4 Number of Defendants

An interesting and potentially important finding about the characteristics of mediated cases deals with the number of defendants. Fully 45% of the completed mediations in Ottawa and 54% of the completed mediations in Toronto have more than one defendant. Over 20% of the Ottawa mediations and 27% of those in Toronto have more than two defendants -- with 6% of the Toronto mediations (113 of 1957) involving six or more defendants.

These are large numbers. And they are large enough to examine whether the pattern of outcomes varies with the number of defendants. Participants have reported anecdotally that mediations with multiple defendants are more difficult. By relating the number of defendants to the

[18] See Figures A2.8 and A2.9 in Appendix A.

outcomes of mediation, later chapters will investigate whether or not this is an important variable.

This concern is reinforced by looking at whether the number of defendants varies by case type. As one would expect, the case type with easily the highest percentage of single-defendant mediations is wrongful dismissal: 77% in Ottawa and 74% in Toronto.[19] For many years, wrongful dismissal has been considered a matter particularly amenable to mediation, and the high settlement rates shown in Chapter 5 below reinforce that belief. But perhaps the effectiveness of mediation in wrongful dismissal cases is linked to the fact that those cases are less likely to have more than one defendant.

[19] See Figure A.2.9 in Appendix A. (If anything, it seems surprising that close to one-quarter of all wrongful dismissal cases have multiple defendants)

Chapter 3: The Pace of Mediated Litigation

3.1 Introduction

This chapter addresses one of the fundamental questions with respect to whether mandatory mediation under Rule 24.1 should be continued and expanded: does it reduce delay? Expressed more precisely, do cases conducted under Rule 24.1 proceed to disposition more expeditiously than comparable cases that are not governed by the Rule?

The short answer is yes. Comparison of cases subject to mandatory mediation to cases not subject to mandatory mediation shows clearly and consistently that in the aggregate – and for different case types -- **civil cases are completed earlier when they are part of a mandatory mediation program**.

The analyses supporting this conclusion are presented in four sections:

Section 3.2: Developing the Control Group
One of the challenges for the evaluation was to find a group of cases which would serve as a sound basis for comparing the mandatory mediation outcomes on this and other dimensions to the experience without mandatory mediation. This section summarizes the rationale for the control group chosen.

Section 3.3: The Key Finding
This section summarizes the key finding on how expeditiously cases are disposed of under mandatory mediation, as compared to the control group experience, namely:

- Are a larger proportion of mandatory mediation cases in Toronto being disposed of at three, six, nine and twelve months, as compared to Toronto cases not subject to mandatory mediation?

Section 3.4: Analysing the Key Finding
This section breaks down the key finding according to two major hypotheses about differences which might be observed in the speed of disposition:

- Are there certain types of cases which are less conducive than others to a speedier disposition under mandatory mediation?
- Are earlier dispositions in mandatory mediation cases more likely to be seen at the very earliest stages in the process (e.g. within three to six months), only to "even out" with the control group at later stages (e.g. nine or twelve months)?

Section 3.5: The Results in Context: Ottawa
This section compares the results of mandatory mediation in the two pilot sites, Ottawa and Toronto, exploring the questions of:

- Did Ottawa's earlier and more extensive experience with mandatory mediation result in more expeditious case disposition, as compared to Toronto?
- Are certain types of mandatory mediation cases disposed earlier in one site than in the other?

Section 3.6: Timing from Initiation of the Claim to First Defence

- Has the introduction of the Rule had an impact on the time between the claim and the first defence – in Ottawa and/or in Toronto?
- Are there differences between Toronto and Ottawa?

Section 3.7: Timing of the Mediation Itself

- What proportion of mediations occur within and outside the 90-day and 150-day time standards in the Rule?

Section 3.8: Patterns of Litigation in Toronto and Ottawa

- Are there differences between Ottawa and Toronto in terms of the relative impact of the Rule and other factors in determining the timing of the mediation?

Section 3.9: Views on the Scope and Timing of Mandatory Mediation

This final section explores the views of mediators, lawyers and litigants – with respect to mediations in which they were personally involved – regarding:

- Whether the case was suitable for mediation, and
- Whether the mediation should have occurred later in the litigation process.

3.2 Developing the Control Group

When the Protocol Committee of the Civil Rules Committee discussed how a mandatory mediation pilot project would be evaluated, the availability of a control group — a set of cases that could validly be compared with cases governed by the new Rule 24.1 — was a key consideration, and subject to extensive discussion and debate. The original evaluation framework prepared for the Civil Rules Committee in 1998 devoted significant effort to ascertaining whether and how a control group could be defined and studied. Generally speaking, a control group would consist of a comparable mix of case managed cases that did not undergo any form of mediation.

Since the Mandatory Mediation Program operates only in Ottawa and Toronto, and since the pace of civil litigation is likely to vary from one court centre to another, any comparison of cases subject to Rule 24.1 and cases not subject to Rule 24.1 would be wise to focus on cases in each of those two locations. However, further limitations already intruded in Ottawa. While Rule 24.1 would apply to statements of claim issued after January 4, 1999, mandatory mediation under the Ottawa Practice Direction had already been operating for the preceding 24 months. Therefore, comparison of 1999 cases with 1997 and 1998 cases in Ottawa would not tell us whether mandatory mediation altered the pace of civil litigation in Ottawa.

Another option for Ottawa was to compare 1999 (or 1998 or 1997) cases to cases from 1996 or earlier that were not subject to mandatory mediation. This was impossible for another reason.

When the Ottawa Practice Direction went into effect in January 1997, it mandated case management as well as mediation. As a result, even if the Practice Direction had a substantial impact, it would be impossible to say whether the post-1996 impact came from the early mediation requirement or the case management features. Since evaluation of case management pilot projects in the early 1990s in Windsor, Toronto and Sault Ste. Marie concluded that case management reduced delay, positive results in Ottawa could not necessarily be linked to mandatory mediation.

Thus, Toronto provided the only possible venue for a control group, both because Rule 24.1 applied to only one-fourth of the statements of claim not covered by the Simplified Rules, and because mandatory mediation had not existed prior to Rule 24.1's effective date of January 4, 1999. Therefore it would be possible in theory to draw a control group either from cases filed before 1999 or cases filed after 1999 but not governed by Rule 24.1.

The Evaluation Framework recommended that the control group be drawn from case-managed cases commenced prior to 1999. This option was selected because the only cases filed after 1999 that were not subject to Rule 24.1 were also not subject to case management. To make that comparison (1999 versus 1999) would produce the same fallacy as would have occurred in Ottawa: comparing a group of cases having both mandatory mediation and case management with a group of cases having neither. Thus, despite the availability of substantial numbers of 1999 cases, and the advantage of holding other environmental factors constant (e.g. what if some extraneous factor such as an increase or decline in new cases or an increase or reduction in available judge time may have occurred?), it was clear from the outset that pre-1999 case-managed cases would make up the pool from which the control group would be drawn.

That decision having been made, the next step was to define with more specificity the size and nature of the control group. The main factor affecting our approach was the desire -- and need -- to examine the impact of mandatory mediation for specific types of cases, rather than for civil litigation in general. Those familiar with civil litigation assumed that different types of cases would take longer than others under any system; for example, personal injury cases may take longer if it is necessary to assess the long-term effects of an accident. Participants also assumed that mediation would be more useful for some types of cases than others; for example, wrongful dismissal cases had been targeted by Toronto's ADR Centre earlier in the 1990s because they were assumed to be more amenable to early mediation than other types of cases.

Thus we drew a stratified sample of 1998 cases, weighted to ensure that there would be enough cases in each of the nine major case types. The details of the sampling procedure are described in Appendix B.

Appendix B also describes the questionnaire that was sent to the plaintiff's lawyer in each of the cases in the control group. Questions focused on the timing and type of disposition in each case, but also captured data on certain characteristics of the cases such as whether or not discoveries had taken place.

The questionnaire, in the form of a one-page fax-back form, was mailed by court staff in the spring of 2000. It was accompanied by a letter from Associate Chief Justice Colter Osborne of the Court of Appeal, asking for the cooperation of counsel.

The Toronto bar responded extremely positively to the evaluation's request for information. Initial (fax-back) responses were quite good for a mail questionnaire, going above 50% fairly early and building toward 60%. At that point, it was decided to send a follow-up request to the

plaintiff's lawyers who had not yet responded. An alternative strategy would have been to send the form to a lawyer for one or more of the defendants, but the previous response rate from plaintiff's counsel was high enough to suggest that a reminder letter would be sufficient. That proved to be the case. A total of 791 questionnaires were returned and analysed in this report, a solid response rate of 72.4%.[20]

This high a response rate increases the level of confidence in the analysis of data provided.

3.3 The Key Finding

The results of the comparative analysis are summarized in Figure 3.1 below.

This table reports percentages for each of the ten categories of cases, as well as a total for all cases in the control group and the mandatory mediation sample. The percentages represent the proportion of cases in that group that have been disposed of within the stated time period (within three months, within six months, within nine months and within twelve months).

Thus for example, 4.5% of the 110 contract/commercial cases in the control group were completed within three months.

For all cases combined, dramatically higher percentages of cases were disposed of in the mandatory mediation sample (1016 cases) than in the control group (791 cases) at the six-, nine-, and twelve-month marks: 25% vs. 15% at six months, 38% vs. 23% at nine months, and 49% vs. 34% at twelve months.

The shaded areas in the table indicate the follow-up periods in which the percentage of mandatory mediation case dispositions is higher than the percentage of control group dispositions. It is easy to see that the shaded areas predominate. Overall, cases in the mandatory mediation sample reported higher disposition percentages than control group cases in 38 of the 44 possible comparisons shown in the table. In some cases, the disposition percentages for mandatory mediation cases are double or triple the comparable percentage in the control group.

After twelve months, the most dramatic differences are seen in negligence cases, contract/commercial cases, collections cases, wrongful dismissal cases and trust and fiduciary duties cases.

A separate analysis also shows that the overall differences in the time interval from claim to disposition between mandatory mediation and control group cases is statistically significant for each of the case types shown.[21]

---

[20] Appendix B also provides the logic behind the specific statistics chosen to make the comparison of 1998 control group cases and 1999 mandatory mediation cases – and the detailed statistical analysis that was undertaken.

[21] Figure 3.1 shows the sampling percentage used to select the sample of cases for the control group. For certain of the case types, the "sample" of control and experimental (i.e. Rule 24.1) cases consisted of all cases of that case type. For these cases, the question of statistical significance does not arise. For case types involving less than a 100% sample, the statistical significance of differences in time between defence and final disposition was tested using Cox Regression techniques – a survival analysis procedure appropriate for analyzing this type of question. For the sampled case types, the Cox Regression found all such differences statistically significant.

Figure 3.1: Time between First Defence and Final Case Disposition: % of Toronto Cases Finally Disposed within Different Follow-up Periods after First Defence: Comparison of (Pre- Mediation Program) Control Group Cases with Cases Filed and Defended under the Mandatory Mediation Program

- **For every case type, cases are disposed more promptly under the Mandatory Mediation Program**

Case Type	Control vs. Mandatory Mediation Sample	# of cases	Sampling % [1]	% of cases disposed within different follow-up periods after 1st defence: 0-3 months	0-6 months	0-9 months	0-12 months
Contract/ Commercial	Control Group	110	50%	4.5%	12%	22%	34%
	Mandatory Mediation	181	100%	6.1	26	42	51
	● (shaded = improvement)						
Collections	Control Group	117	100%	14.5	23	34	43
	Mandatory Mediation	107	100%	13.1	33	42	58
	● (shaded = improvement)						
Medical Malpractice	Control Group	54	100%	0	4	11	19
	Mandatory Mediation	22	100%	4.5	9	14	27
	● (shaded = improvement)						
Motor Vehicle	Control Group	101	50%	5.0	9	21	31
	Mandatory Mediation	249	100%	4.8	21	32	41
	● (shaded = improvement)						
Negligence	Control Group	134	100%	6.7	10	14	24
	Mandatory Mediation	137	100%	10.2	29	41	46
	● (shaded = improvement)						
Other	Control Group	110	67%	6.4	15	26	41
	Mandatory Mediation	169	100%	7.1	26	37	50
	● (shaded = improvement)						
Real Property	Control Group	25	100%	8.0	28	36	44
	Mandatory Mediation	29	100%	17.2	41	45	52
	● (shaded = improvement)						
Trust & Fiduciary Duties	Control Group	25	100%	4.0	8	12	20
	Mandatory Mediation	18	100%	0	6	39	44
	● (shaded = improvement)						
Wrongful Dismissal	Control Group	91	100%	8.8	26	33	47
	Mandatory Mediation	91	100%	8.8	28	48	60
	● (shaded = improvement)						
Remaining Case Types	Control Group	24	100%	4.2	4	4	8
	Mandatory Mediation	13	100%	0	8	23	39
	● (shaded = improvement)						
TOTAL CASES	Control Group	791		7.0	15	23	34
	Mandatory Mediation	1,016		7.6	25	38	49
	● (shaded = improvement)						

Notes: Percentages are rounded off to the nearest full percentage point, except for 0-3 month cases, where percentages are so small that they are rounded off to the nearest tenth of a percent.

1 The sample of medical malpractice control group cases consisted of 100% of such cases commenced and defended from September, 1997 through December 1998. For all other case types, the control group samples were randomly selected by applying the percentages shown to all cases commenced and defended from January through October 1998. The samples of mandatory mediation cases consisted of 100% of all such cases by type commenced and defended from January 4 through August, 1999 (to allow a 12-month follow-up).

Thus one of the key questions in the evaluation (Do mandatory mediation cases proceed to disposition more expeditiously than cases not subject to mandatory mediation?) is clearly answered in the affirmative.

3.4 Analysing the Key Finding

Beyond this initial question, these data can also be used to understand how it is that mandatory mediation cases proceed more expeditiously. In other words, how can this overall finding be explained?

From focus groups and interviews with participants in the evaluation, a number of perceptions and expectations about time to settlement were obtained. Although it is difficult to generalize from the diverse views expressed, some apparent patterns were seen. In Ottawa, which had more experience with mediation at the time of the interviews and focus groups, most participants believed that the mandatory mediation process resulted in earlier dispositions, because the timeframes for mediation forced counsel to focus on the file more quickly, and the process gave clients an earlier and more direct role which could lead to unexpected settlements even in complex cases, and clarified the issues and expectations earlier.[22]

In Toronto, while there was some acknowledgement that on balance, earlier mediation was better and could potentially lead to earlier dispositions, attention was focused on those types of cases (e.g., medical malpractice, insurance, and complex commercial cases) where *no* advantage was anticipated in terms of earlier settlements.

Two key hypotheses were developed at the outset, and then tested. From the literature on mediation and the comments of participants in the evaluation, one would have expected two things:

> First, that any impact of early mediation on time to disposition is more likely to occur early in the process, perhaps in the first three months or the first six months after the case has been defended. As cases proceed to disposition over a longer period of months or years, the impact of early mediation would be likely to decrease, so that (in the extreme) after ten years or even five, the difference in the percentage of cases disposed would be minimal, because only the most intractable disputes would still be pending in court. Thus the longer the analysis can be extended, the more complete will be the picture of the effect of mandatory mediation on the pace of civil litigation.
>
> Second, the impact of early mandatory mediation would be greater for some case types than others. Lawyers in both Toronto and Ottawa pointed to medical malpractice and personal injury cases as less likely to benefit from mediation, since mediation is often perceived to take place too early in the process -- before examinations for discovery and before an adequate assessment of how permanent or extensive an injury is.

[22] Participants in the Ottawa focus groups also felt that certain types of cases generally were more likely to proceed in a speedier fashion, specifically: less complex cases, cases with weak defences, cases where there is more room to negotiate (as with larger initial claims), cases where the parties have an interest in maintaining a workable relationship in future, and cases where there is little question of liability.

What do the data in Figure 3.1 show? First, the hypothesis that mandatory mediation may have a greater impact on disposition percentages at the early stages is not supported. In three of the largest six case types (collections, motor vehicle, and wrongful dismissal), the disposition percentage after three months is identical or slightly higher for the control group cases. But in those same three case types, the disposition rate is higher after six, nine and 12 months. In fact, a higher percentage of mandatory mediation cases were completed after nine months and 12 months in every one of the ten categories than the comparable cases in the control group.

Obviously, 12 months is still a short time in the life of many civil cases, but the data show that over 50% of cases in five different case types were completed within a year afte r the initial claim was defended. (In the control group, no case type reached 50% within the first year after defence.) It may be that the gap will decrease after 18 or 24 months; it is still too early for this assessment. However, the fact that the gap widened so much at the nine and 12 month intervals is striking.

The second hypothesis was also not borne out by the data. Mandatory mediation reduced time to disposition in all categories, including medical malpractice, motor vehicle and negligence cases. In fact, one of the largest gains from Rule 24.1 in Toronto was seen in negligence cases, where the difference was not only visible but also statistically significant. (See Appendix B.)

Disposition percentages for negligence cases in the mandatory mediation sample were triple those of the control group negligence cases at six months and nine months, and almost double after a full year. In contrast, wrongful dismissal cases showed less difference between the control group and the mandatory mediation cases. Perhaps the cases that lawyers felt were amenable to early mediation (e.g., wrongful dismissal) were cases in which lawyers were already moving forward without mediation, while cases for which mediation was seen as less useful (e.g., negligence) could in fact be disposed of more expeditiously once counsel abandoned their old assumptions and focused earlier on the file.

At the same time, the comparatively more expeditious performance of cases under mandatory mediation should not obscure the fact that medical malpractice cases have the lowest disposition percentages after 12 months, compared to other case types (27% for the mandatory mediation cases and 19% for the control group). Similarly, motor vehicle cases, despite the apparent benefit of mandatory mediation (41% disposed after one year, contrasted with 31% of the control group), have a somewhat lower disposition rate than other case types. In contrast, wrongful dismissal (60% completed after one year) and collection (58%) cases are at the high end, as evaluation participants expected.

Since questionnaire respondents and focus group participants, especially in Toronto, questioned whether mandatory mediation under Rule 24.1 was too early in certain case types (medical malpractice and motor vehicle cases), this topic will be examined further below.

3.5 The Results in Context: Ottawa

While the results in Figure 3.1 can be interpreted on their face, it is also important to provide some additional context. For example, it would be interesting to know how the pace of mandatory mediation in Toronto compared with the pace of mandatory mediation in Ottawa. If mandatory mediation leads to a higher proportion of dispositions at earlier points in time, then

the Toronto percentages could be expected to be comparable to those in Ottawa. Otherwise, there may be extraneous factors that may be more important than is suggested by a review of the Toronto data alone.

If one were to pose a working hypothesis relating Ottawa and Toronto, one would expect Ottawa cases to be more expeditious than Toronto, given that the bar already had two years' experience with early mandatory mediation, and were even more familiar with the procedure, since Rule 24.1 applies to all cases in Ottawa and only a fraction of the cases in Toronto.

Figure 3.2 below presents Ottawa data in the same format as the preceding table -- the same case types and the same four follow-up periods. While there was no control group in Ottawa, we do have data covering the full two years in which mandatory mediation operated under Ottawa's local Practice Direction. A total of 3,227 defended cases filed in 1997 and 1998 were subject to the Practice Direction, and a total of 812 cases under Rule 24.1 were defended by August 31, 1999, and thus included in a mandatory mediation sample comparable to the one used for Toronto.

A major difference between the cases subject to mandatory mediation in Toronto and Ottawa is the inclusion of Simplified Rules cases in Ottawa. Since those are excluded in Toronto, they have been identified separately in Ottawa; so for example, a collection case proceeding under Rule 76, the Simplified Procedure, would be included in the "Simplified Rules" category in the Ottawa table, not the "Collections" category. Thus Figure 3.2 includes both a subtotal for Ottawa (without Simplified Rules cases) and an overall total.

The data show that case dispositions in Ottawa have been somewhat more expeditious under its mandatory mediation process than case dispositions in Toronto. While there are some differences — Ottawa's performance was somewhat better under the Practice Direction than under Rule 24.1, and generally somewhat better than Toronto's performance under Rule 24.1 — the most striking observation is that the pace of civil litigation in Ottawa under both frameworks for mandatory mediation is comparable to the pace of civil litigation in Toronto under mandatory mediation, and quite different from the pace of civil litigation under case management alone (as reflected in the Toronto control group). Thus the data on the pace of civil litigation in Ottawa reinforce the finding that mandatory mediation has made civil case processing more expeditious.

The importance of separating Simplified Rules cases from the rest of the litigation in Ottawa is confirmed by examining the data in Figure 3.2. Simplified Rules cases are the largest single category: 25% of the cases under the Practice Direction, and 24% of the cases under Rule 24.1.

They are also among the most expeditious cases: 76% were disposed within 12 months under the Practice Direction (slightly higher than wrongful dismissals at 74%), and 68% under Rule 24.1 (slightly higher than collection cases at 64%, but less than wrongful dismissal cases at 73%). Unfortunately, there is no way to know whether these cases would have moved as expeditiously without mandatory mediation, although one could check these percentages against data collected on Simplified Rules cases in Toronto and Kingston in conjunction with the evaluation of that Rule.

Figure 3.2
Time between First Defence and Final Case Disposition:
% of Ottawa Cases Finally Disposed within Different Follow-up Periods Following First Defence:
Comparison of Cases under Ottawa Practice Direction (PD) (January 1, 1997-December 31, 1998) with Cases Filed and Defended under the Mandatory Mediation Program (January 4, 1999-August 31, 1999)

Case Type	Practice Direction or Pilot Program	# of cases	% disposed 0-3 months	% disposed 0-6 months	% disposed 0-9 months	% disposed 0-12 months
Contract/ Commercial	PD	559	22.0%	37%	48%	58%
	Pilot	169	15.4	29	39	48
Collections	PD	304	32.6	48	61	68
	Pilot	75	26.7	45	57	64
Medical Malpractice	PD	77	2.6	8	19	32
	Pilot	13	7.7	23	31	38
Motor Vehicle	PD	385	13.2	28	40	52
	Pilot	84	9.5	27	32	44
Negligence	PD	276	15.6	28	37	47
	Pilot	55	21.8	40	45	62
Other	PD	346	16.5	33	40	52
	Pilot	107	14.0	26	37	42
Real Property	PD	78	25.6	41	54	60
	Pilot	19	26.3	47	58	58
Trust & Fiduciary Duties	PD	35	20.0	31	40	49
	Pilot	16	6.3	38	44	44
Wrongful Dismissal	PD	208	34.1	51	63	74
	Pilot	64	43.8	53	61	73
Remaining Case Types	PD	149	12.1	21	31	37
	Pilot	18	11.1	33	39	56
TOTALS without Simplified Rules	PD	2,417	20.3	35	45	55
	Pilot	620	19.0	35	43	52
Simplified Rules	PD	810	36.0	56	65	76
	Pilot	192	33.3	49	58	68
OVERALL TOTALS	PD	3,227	24.3	40	50	61
	Pilot	812	22.4	38	47	56

Notes:

1. *Cases are not sampled. All cases within the time periods are included.*
2. *The Practice Direction cases operated under different time standards (e.g. assignment of mediators within 15 days of 1st defence, and requirement to mediate within 60 days of 1st defence).*
3. *The Practice Direction also included non-family applications.*

Some other observations may be made by comparing Figures 3.1 and 3.2.

Ottawa's negligence cases were more expeditious in the pilot project than under the Practice Direction, in contrast to most other case types. Given that negligence cases in Toronto showed the greatest difference from 1998 to 1999 as well, perhaps there has been a change in the practices of the Ontario negligence bar or Ontario negligence insurers that could account for some of these differences.

By breaking the data down into case types, it is also possible to identify one area where Toronto is slightly outperforming Ottawa in spite of Ottawa's greater familiarity with the mandatory mediation process: contract/commercial cases. After nine months and 12 months, Toronto's pilot project disposed of 42% and 51% of those cases, while the Ottawa pilot project recorded figures of 39% and 48%. (Note, however, that Ottawa stood at 48% and 58% under the Practice Direction.)[23]

This analysis has not focused on dispositions at three and six months. Toronto and Ottawa appear to be sharply different at the three-month interval; however, this may be largely because Ottawa court staff enter dispositions earlier, following instructions of the Regional Senior Judge. This difference is spelled out in greater detail in Appendix B.

This analysis has also not focused on the differences that emerge in Ottawa by comparing the pace of litigation under the Practice Direction and Rule 24.1. Our hypothesis that litigation would proceed more expeditiously in Ottawa than Toronto was based on the notion that Ottawa lawyers, judges and court staff would be more familiar with the process. If this notion is valid, the 1999 cases should have been more expeditious than the 1997-98 cases; however, with the exception of negligence cases, they were not. In the aggregate, 1997-98 cases were only slightly more expeditious than 1999 cases, but the five largest case categories (Simplified Rules, contract/commercial, motor vehicle, collections and "Other") were consistently more expeditious under the Practice Direction.

We have not sought out explanations for this phenomenon, either through interviews or further analysis of the data. The difference is likely to be attributable in part to the fact that the Practice Direction used tighter time limits for choosing a mediator (15 days after first defence rather than 30 days) and holding the mediation (60 days after first defence rather than 90 days), and in part to what researchers refer to as a "Hawthorne effect"—in which a change in how things are done generates initial performance gains before a new pattern is established. These possible explanations are only speculation until further study is done in the future.[24]

---

[23] It is possible that the results may be affected by the existence of the Commercial List in Toronto. If cases put on that list are those which take longer to dispose of, the removal of such cases from the total population might account for shorter average times to disposition calculated over those cases remaining in the population.

[24] A more detailed exploration of the differences between Ottawa and Toronto was also beyond the scope of the evaluation. It should however be pointed out that these differences could be due to a range of factors. For instance, Ottawa mediators are more likely than in Toronto to be selected (earlier) by the parties than to be assigned by the Local Mediation Coordinators. This practice could result in an earlier mediation/ disposition. On the other hand, the greater familiarity of the bar with mediation because of the earlier Practice Direction could instead in whole or in part account for the differences in the speed of litigation.

3.6 The Results in Context: Timing from Date of Claim to First Defence

All of the analysis thus far has discussed the pace of litigation starting from the date a case is first defended. This excludes all civil claims that are undefended and therefore not covered by the mandatory mediation Rule. However, it also means that we have not examined the timing of the first stage of civil litigation—from commencement of the case to the filing of the first defence.

Since most of the timetable and deadlines for events under Rule 24.1 (e.g. to notify the court of selection of a mediator, or to complete the mediation) are expressed in terms of a fixed number of days after the first defence, any variations in the timing of this first defence are important to monitor—both in terms of understanding how long the parties may have had to consider issues related to the case before the deadlines in the Rule begin to apply, and of checking whether the introduction of the Rule has resulted in any unanticipated behaviour on the part of the parties that could affect the timing, cost or outcomes of the court process.

In fact, contrary to our concern, earlier findings reported in our 13-month interim report (based on defended cases commenced in the first six months of the pilot projects [January 1 through June 30, 1999]) showed that cases were being defended somewhat more quickly in both Toronto and Ottawa. Ottawa cases were defended somewhat more expeditiously than those in Toronto, but both centres were more expeditious in 1999 than in 1998.

Figure 3.3 below compares the time from commencement to defence in 1998 cases with all 1999 commenced cases in both Ottawa and Toronto. With more time to pick up late defences in the 1999 cases, the inter-year differences have been reduced. Defences in 1999 cases are still filed slightly more expeditiously than defences in 1998 cases, but the key finding is that despite the need to prepare for an early mandatory mediation in 1999, there is no evidence that litigants are slowing down the initial stages of the process.

Figure 3.3: Comparison: Time Between Commencement and First Defence: Defended Cases Commenced January 1-December 31, 1999 vs. Defended Cases Commenced in 1998

	25th percentile	50th percentile (median)	75th percentile	90th percentile	average	% defended within 26 weeks
Ottawa						
Jan-Dec 98	3 weeks	5 weeks	14 weeks	24 weeks	9.5 weeks	95%
Jan-Dec 99	3 weeks	5 weeks	12 weeks	23 weeks	9.0 weeks	95%
Toronto						
Jan-Dec 98	3 weeks	7 weeks	19 weeks	26 weeks	12.3 weeks	91%
Jan-Dec 99	3 weeks	7 weeks	17 weeks	25 weeks	11.1 weeks	93%

This conclusion is reinforced by comparing Toronto and Ottawa. If parties who are more experienced with the Rule might undermine its objective of ensuring early mandatory mediation (i.e. within a certain number of days from defence) by delaying service or defence, one would expect that Ottawa litigators -- who have considerably more experience with mandatory mediation than Toronto due to their two years under the Practice Direction – would be more

likely to exhibit longer time intervals between commencement and defence than do their Toronto counterparts.

Figure 3.4: Time Between Commencement and First Defence: Defended Cases Commenced, January 1-December 31, 1999

	25th percentile	50th percentile (median)	75th percentile	90th percentile	average	% defended within 26 weeks
Ottawa	3 weeks	5 weeks	12 weeks	23 weeks	9.0 weeks	95%
Toronto	3 weeks	7 weeks	17 weeks	25 weeks	11.1 weeks	93%

Clearly, as Figure 3.4 shows, this is not the case. On virtually all indicators, cases in Ottawa are defended within a shorter time after commencement than are cases in Toronto. For instance, a comparison of "typical" cases (i.e. the median[25] cases) shows a median time in Ottawa of five weeks, two weeks *shorter* than in Toronto.

The bar charts (Figures 3.5a and 3.5b) display in more detail the distribution of cases defended over different time intervals. Both have bimodal (two-peaked) distributions. By far the highest peak occurs in the first few weeks (after a sharp rise for the first three weeks). The frequencies of cases then decline somewhat more gradually, and then increase to a second (much lower) peak at around 25 weeks. The second smaller peak clearly reflects the coming of a six-month court deadline. That second peak is more pronounced in Toronto than in Ottawa, suggesting differences between litigation practices in the two cities.

Figure 3.5a

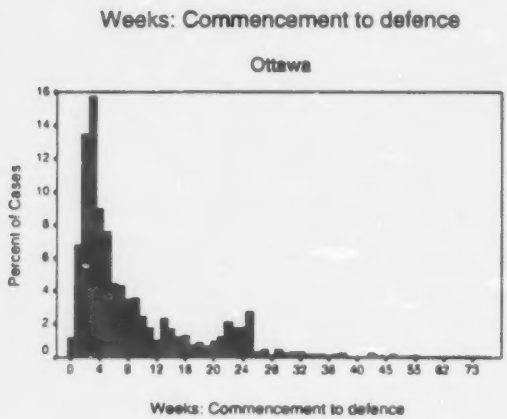
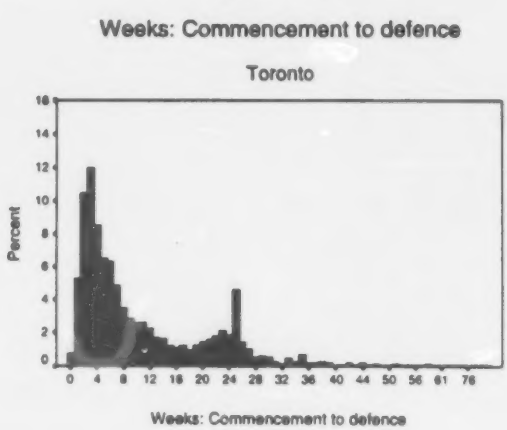


Figure 3.5b



One change that is detectable in the pilot project cases in both Toronto and Ottawa is a slight increase in the defence rate. Table A2.3 in Appendix A shows the defence rate in Toronto was 74% for cases commenced in the first half of 1999 and 72% for cases commenced in the second

[25] In rough terms, the "median case" is the case that has an elapsed time that is longer than 50% of the elapsed times and shorter than 50% of the elapsed times. It is thus used to describe the typical or most central case. In more precise language, the median case is the case with the shortest elapsed time that exceeds 50% of the elapsed times.

Note that the median time is much lower than the mean time. The mean in Ottawa was 9.04 weeks in 1999 and 9.54 weeks in 1998; the mean in Toronto was 11.07 in 1999 and 12.27 in 1998. This is to be expected, because the cases are skewed--in other words, the fast cases fall within zero to five weeks, while the slow cases can take as long as a year, or in one case in Ottawa, two years. When data are statistically skewed--as most court data are--the mean is not an accurate picture of the "average" case, and should not be used.

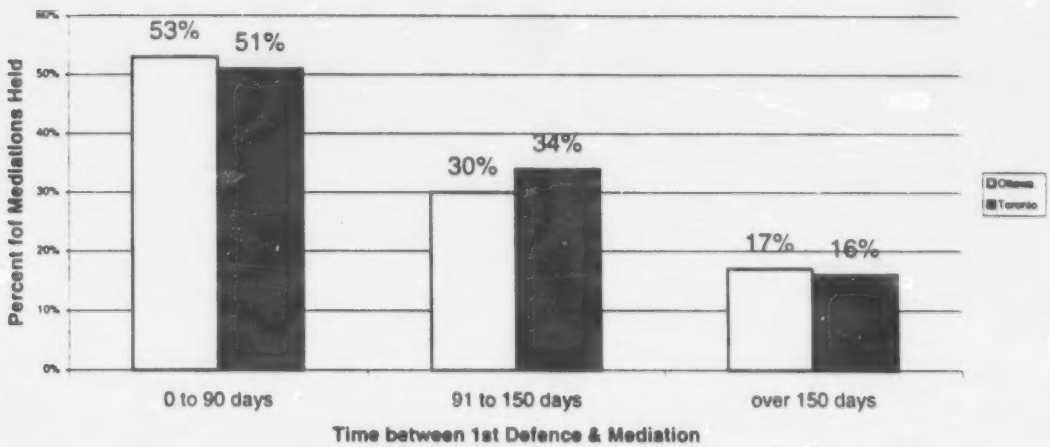
half of 1999. In contrast, 1998 cases were defended at rates of 71% and 70%, and 1997 cases at 67% in both the first and second halves of that year. The 1999 defence rates in Ottawa were 56% and 57%, compared with 50% and 57% in 1998, and 54% and 50% in 1997. Given that defence rates in both cities rose slightly from 1997 to 1998, before the pilot project began, similarly small increases in 1999 cannot be attributed to changes in practice brought on by the mandatory mediation Rule. Perhaps the gradual decline in overall civil filings from 1998 to 1999 in both Ottawa and Toronto is linked to the slight increase in defence rates, but again this is a relationship whose examination goes beyond the scope of the current evaluation.

3.7 The Results in Context: Timing of the Mediation Itself

The analysis in this chapter has focused on how long civil cases take to reach a disposition when they are subject to mandatory mediation, and whether that time to disposition is faster than in cases not subject to mandatory mediation. The chapter has not focused on how long cases take to reach the mediation session itself.

Figure 3.6 provides a summary of that information for both Ottawa and Toronto. This bar graph relates the timing of the mediation to the intervals in the Rule. It shows that over half the mediations were held within 90 days of the first defence, as required by the Rule; there is virtually no difference between Ottawa and Toronto. Rule 24.1 also allows the parties to choose to extend the time to mediation by another 60 days. As a result, approximately two-thirds of the remaining mediations (about one-third of all mediations: 30% in Ottawa and 34% in Toronto) were held from 91 to 150 days after the first defence. The remaining mediations (17% in Ottawa and 16% in Toronto) were held over 150 days after the first defence.

Figure 3.6 Timing of Mediations: Ottawa and Toronto



These percentages suggest that Rule 24.1 has generated a similar pattern in both cities, in spite of other observable differences in the mix of case types and the overall pace of litigation in Ottawa and Toronto. While there has been some support expressed among participants for an extension of time deadlines, as long as a majority of mediations in both cities are completed within 90 days, a general extension of the time limit to 150 days is more likely to slow the overall pace of

litigation. Given the flexibility that seems to be reflected in the fact that one in six Ottawa mediations and one in seven Toronto mediations take place after the 150-day limit, a general extension of time limits would have little benefit for the minority of cases that do take more time—and may legitimately need that additional time.

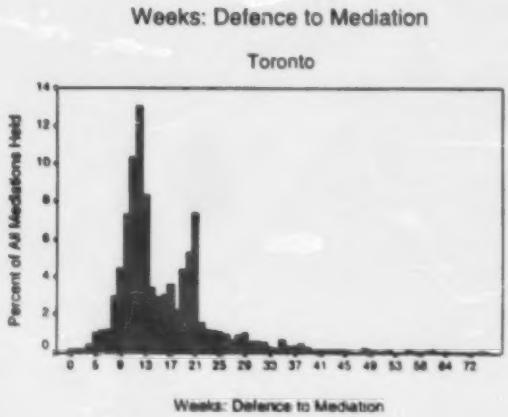
A comparison of Figure 3.6 with its counterpart in the 13-month interim evaluation report (where an earlier version of this bar graph appears as Figure 3.5) shows that the percentage of cases taking over 150 days has increased in both Ottawa and Toronto (from 12% to 17% in Ottawa, and from 9% to 16% in Toronto). This is not necessarily a cause for concern, since the increased proportion of mediations that take place beyond the 150-day period may simply reflect the fact that the earlier percentages were calculated after a shorter follow-up period had elapsed. The longer follow-up time we now have provides more opportunities to capture cases that go beyond the 150 day limit. On the other hand, cases may in fact now be taking longer. Whether the increase is a cause for concern or not will require additional analysis of the data, and future monitoring of the flow of mediated cases by the Ministry.

A somewhat different view of the time from first defence to mediation in Ottawa and Toronto emerges from Figures 3.7a and 3.7b below. These figures show the time from defence to mediation in weeks, with each bar representing a single week.

Figure 3.7a

25th %tile	median	75th %tile	90th %tile	Average
10 weeks	13 weeks	20 weeks	28 weeks	16 weeks

Figure 3.7b



25th %tile	median	75th %tile	90th %tile	Average
11 weeks	13 weeks	20 weeks	27 weeks	16 weeks

In both Ottawa and Toronto, the week in which the most mediations were held was the twelfth week, just before the 90-day deadline. In Toronto, however, a second high point emerges in week 21, immediately before the 150-day deadline (just as we observed a bulge in defences filed in week 25). Rather than the gradual completion of mediations that occurs in Ottawa, Toronto disposes of a higher proportion of mediations immediately before the two deadline days. The overall results appear much the same (for example, the median time and mean time in both Ottawa and Toronto are 13 and 16 weeks respectively); however, they are arrived at in two different patterns. In Toronto, the pattern is much more rule-based; the Rule is driving the process, so that more mediations are scheduled at the end of the timelines. In Ottawa, by

contrast, the pattern seems more likely to be driven by the requirements for particular cases or a different pattern of the lawyers' practice – and looks much more like a normal curve, albeit with a long tail that picks up tardy cases in which a number of mediations are held six to nine months after first defence.

3.8 Patterns of Litigation in Ottawa and Toronto

Taken together, the material in this chapter shows that the Mandatory Mediation Program has met its objective of increasing speed of dispute resolution in civil cases. While mediation has had mixed results in achieving delay reduction in the United States,[26] the Ontario program incorporating early mediation and case management has moved cases to disposition more expeditiously.

While this conclusion can be verified empirically only in Toronto, the fact that Ottawa civil cases move just as expeditiously (and in fact somewhat more expeditiously) than those in Toronto suggests that delay has been reduced substantially there as well. Prior to 1997, the Ottawa court had a reputation for substantial backlogs and delays,[27] so its performance since 1997 almost certainly shows the effectiveness of combining case management and early mandatory mediation as key elements in a delay reduction strategy.

The material in this and the preceding chapter also shows a consistent pattern of differences between dispute processing under mandatory mediation in Ottawa and Toronto. Ottawa cases proceed to disposition somewhat more expeditiously than Toronto cases, yet Ottawa has a substantially greater percentage of cases in which no mediation has been held at all over 150 days after a mediator has been selected or assigned (15.7% of Ottawa cases compared with only 6.0% of Toronto cases).[28] Ottawa's ability to process civil cases expeditiously is reflected not only in a somewhat higher settlement rate during mediation, but also in a substantially higher proportion of cases disposed of without a mediation session (19.2% compared with 12.4% in Toronto). It appears that in Ottawa, more cases amenable to early resolution are in fact resolved early, even as the other cases wait longer for mediation than in Toronto.

This pattern is reinforced by and reflected in the two pairs of bar graphs above that show Toronto litigation responding more obviously to outside time deadlines (six months from commencement to defence, 150 days from defence to mediation) than does litigation in Ottawa.

As Toronto lawyers and litigants gain more experience with mandatory mediation, it will be interesting to see whether patterns similar to Ottawa emerge there. However, other distinctive characteristics of Toronto litigation that reflect the larger size of the bar (e.g. greater reliance on formal motions) are likely to remain.

A more general observation is that significant differences have been noted between Ottawa and Toronto. Although these cities are two of the largest in Ontario, it would be expected that analogous differences in legal cultures and operational practices should be anticipated and taken into account in initiatives to expand the use of mediation into other courts in the province.

---

[26] See, for instance, Steelman, David with J.A. Goerdt and J.E. McMillan, Caseflow Management: The Heart of Court Management in the New Millennium, National Center for State Courts, 2000, espec. pp. 164-168.

[27] See Carl Baar, The Reduction and Control of Civil Case Backlog in Ontario: Report to the Civil Litigation Task Force of the Advocates' Society (June 1994), pp. 13-14, 40-48.

[28] See Table A3.2 in Appendix A.

3.9 Participants' Views on the Timing of Mandatory Mediation

To ensure the validity of results, the evaluation attempted to assess the impact of mediation from a variety of perspectives and methodologies. Accordingly, mediators, lawyers and litigants who completed a sample of mediations under Rule 24.1 were asked a number of questions regarding aspects of the Rule that relate to the timing of the mediation. As well, similar issues were addressed through individual interviews and a series of focus groups.

This section will examine the views of mediators, lawyers and litigants on whether or not the mediation should have been held later in the process.

Focus groups of lawyers in Ottawa and Toronto revealed that the Ottawa bar generally found fewer difficulties with time limits than did the Toronto bar. One Ottawa focus group reported "consensus that for most cases timing was not a problem. Early mediation was worthwhile even for complex cases because there was always the possibility of an unexpected settlement." Another Ottawa focus group session "agreed that the 90-day requirement to mediate appeared to be working well, but that parties should have the option of consenting to a further extension of six months," as opposed to the current 60 additional days.

In Toronto, lawyers in the focus groups made positive statements about the general benefits of mediation in reducing delay, but also made numerous statements about cases and situations in which early mandatory mediation is not helpful. One group reported "consensus that success of mediation is directly related to timing of mediation and that when the 'best' time is varies with each case." However, that group added, "earlier [is] better from the client's point of view."

There was a general perception that the granting of extensions was more informal and flexible in Ottawa, and that less consistency in the granting of extensions was seen in Toronto. A need was expressed for greater clarity in the criteria for extensions, and more flexibility to seek extensions without filing a motion.

Regarding discovery, many Ottawa participants were of the view that there are many less complex cases in which discovery prior to mediation is not essential, if there is a proper exchange of documents (or "mini-discoveries"). Mediation can settle some issues, thus shortening or eliminating discoveries. Some felt the Rule needs to be clearer with respect to the timing of discovery.

A number of other comments were forthcoming from the Toronto lawyers' focus group sessions. It should, however, be noted that these comments do not have the same validity as responses representing the majority opinion determined by a scientifically structured survey. Nonetheless, they are valuable and are presented separately in Figure 3.8.

Figure 3.8: Selected Comments from the Toronto Lawyers' Focus Group

- "…. Should not allow lawyers too much flexibility [with respect to timing] because it will get abused. Most clients want mediation; they understand it; they know it is to their benefit; they want the lawyers to focus on their cases earlier. Lawyers conspire to stall a case sometimes; the earlier lawyers are forced to think about the issues the better."
- "It was felt that no cases should be totally excluded from mandatory mediation."
- "[The] system needs a bit more flexibility with respect to timing."
- "The consensus was that timing is not a problem in non-insurance cases, apart from medical malpractice."
- "In personal injury cases where damages involve significant future care and dependency claims, mandatory mediation is probably not appropriate at an early stage."
- "Commercial cases are well-suited to mandatory mediation; damages have already occurred for the most part; often plaintiffs issue the claim to get the adverse party to the table to talk about settlement; no one intends to take the matter to trial so it is important to get to the table as quickly as possible."
- "However, some felt that commercial cases would settle independently of the mandatory mediation process [and] some commercial litigators felt that discovery … is the true test."
- "Everyone agreed that the time limit should be triggered by the delivery of the last defence or when pleadings can be noted closed."
- "There are two extremes: force the parties to get together at the outset or allow lawyers the flexibility to decide when the mediation occurs. Most felt that on balance, earlier is better but there does need to be flexibility because if the lawyers are not interested/cooperative, their clients will not be either; i.e. it needs to be mandatory for lawyers to change their practices to work up these cases faster."

In the questionnaires, mediators and lawyers were also asked about when the mediation should have been held. The mediators' question was:

> "*If mediation had begun later in the litigation process* –
> would (it) have harmed or improved the timing or likelihood of reaching either a complete settlement or a fuller narrowing of the issues"[29]

As shown in Figure 3.9, there are significant differences in the responses from Ottawa and Toronto mediators. In 42% of Toronto responses, the mediators felt that having the mediation later in the litigation process would lead to an improvement. This contrasts with only 18% of Ottawa mediator response.[30]

[29] For exact wording see question 16a on the Mediator's Evaluation Form in Appendix B.

[30] Separate analysis shows that in both Ottawa and Toronto similar sentiments were voiced by assigned and selected mediators. However – again in both Ottawa and Toronto – mediators in cases that were completely settled at mediation were considerably more likely to feel that holding the mediation later in the litigation process would have resulted in harmful impacts (52% vs. 37% for all responses in Ottawa, and 44% vs. 23% for all responses in Toronto).

Figure 3.9. Likely impact if mediation had begun later in the litigation process (Mediators' Responses)		
Likely Impact	Percent of Responses	
	Ottawa	Toronto
Don't know or not relevant	14%	14%
Harmful Impact	46%	23%
No Impact	23%	21%
Some Improvement	18%	42%
Total Responses	396	739

Similarly, lawyers were asked a related question,
"how much do you agree or disagree with ...the ... statement...
The mediation should have been held later in the process."[31]

The results shown in Figure 3.10a show that the differences between Ottawa and Toronto lawyers on this issue are even more pronounced than the analogous differences between Ottawa and Toronto mediators. While a strong majority (66%) of Ottawa lawyers disagreed that the mediation should have been held later in the process, a majority (54%) of Toronto lawyers *agreed* that the mediation should have been held later in the process.

In both Ottawa and Toronto a higher proportion of defence (compared to plaintiff's) lawyers felt that the mediation should have been held later (in Ottawa, 31% of defence lawyers and 15% of plaintiff's lawyers; in Toronto, 58% of defence lawyers and 48% of plaintiff's lawyers). Whether or not the mediator was chosen or assigned did not seem to influence lawyers' responses on this issue.

Figure 3.10a. The mediation should have been held later in the process (Lawyers' Responses)		
Response	Percent of Responses	
	Ottawa	Toronto
NA, don't know	1%	1%
Strongly or somewhat disagree	66%	36%
Neither agree or disagree	10%	9%
Somewhat or strongly agree	22%	54%
Total Responses	310	705

Litigants were asked the same question as lawyers about whether the mediation should have been held later in the process. The litigants' responses are shown in Figure 3.10b:

[31] For exact wording see question 9c on the Lawyer's Evaluation Form A in Appendix B.

Figure 3.10b. The mediation should have been held later in the process (Litigants' Responses)		
Response	Percent of Responses	
	Ottawa	Toronto
Strongly or somewhat disagree	73%	47%
Neither agree nor disagree, or don't know	18%	22%
Somewhat or strongly agree	9%	31%
Total Responses	173	331

The litigants' responses mirror those of the lawyers, in that Toronto litigants were more likely to agree with the statement than were Ottawa litigants. However, the level of agreement was substantially lower among litigants than among lawyers, partly because a larger proportion of litigants in both Ottawa and Toronto had no opinion on the question, and partly because litigants were more likely than lawyers to disagree with the statement. In other words, the litigants had a more positive view of the process than did the lawyers, and this held true in both cities.[32]

Further analysis of the litigants' responses to this question checked to see whether the answers depended on the outcome of the mediation, on whether the respondents were plaintiffs or defendants, and on whether the mediator was selected or assigned. As might be expected, litigants in both Ottawa and Toronto were substantially more likely to disagree with the statement if the case had completely settled that if it had not settled or had been partially settled. Furthermore, plaintiffs responded more positively than did defendants, both in Ottawa and Toronto.

The effect of selecting or assigning a mediator was not as clear. In Ottawa, litigants were less critical about the timing of the mediation when the mediator had been assigned rather than selected, an apparently counterintuitive finding; however, given the small number of assigned mediators in Ottawa, the difference would not be significant. In Toronto, as might be expected, litigants were more critical when the mediator had been assigned.[33]

Litigants were also asked to agree or disagree with the statement,

> *"... One of the merits of the mandatory mediation was that it required parties and their counsel to begin negotiations earlier than would otherwise have been the case."*

As shown in Figure 3.11, a clear majority of litigants in both sites felt that earlier negotiations occurred as a result of the mediation, and that this was a benefit.

[32] Note however that the response rate for the litigant questionnaires was lower than for the lawyer questionnaires.

[33] Once again, this is not necessarily a reflection on the quality of the individual mediators, but may reflect the likelihood that assignment of a mediator is more likely to occur when lawyers have not given as much attention to the case at the outset.

Figure 3.11: One of the merits of the mandatory mediation was that it required parties and their counsel to begin negotiations earlier than would otherwise have been the case (Litigants' Responses)

Response	Percent of Responses	
	Ottawa	Toronto
Strongly or somewhat disagree	11%	16%
Neither agree nor disagree, or don't know	16%	25%
Somewhat or strongly agree	73%	60%
Total Responses	173	333

Finally, mediators were also asked,

"*If examinations for discovery had taken place before mediation began* – would (it) have harmed or improved the timing or likelihood of reaching either a complete settlement or a fuller narrowing of the issues"?[34]

As shown in Figure 3.12, in both Ottawa and Toronto a majority of mediators felt that having discoveries before the mediation would have harmful impacts. This sentiment was, however, more prevalent in Ottawa than Toronto (81% vs. 54%).[35]

Figure 3.12. Likely impact if examinations for discovery had taken place before mediation began (Mediators' Responses)

Likely Impact	Percent of Responses	
	Ottawa	Toronto
Don't know or not relevant	6%	19%
Harmful Impact	81%	54%
No Impact	12%	22%
Some Improvement	0%	5%
Total Responses	396	729

This group of three questions underscores the strong support for early mandatory mediation in Ottawa, in contrast to the extent to which Toronto mediators and lawyers believe it would work better if held later in the process. Still, a strong majority of Toronto mediators supported holding the mediation before examination for discovery, and only 5% felt the case would have benefited from examinations for discovery.

Recalling the comparison of Ottawa and Toronto in the previous section, perhaps Ottawa's apparent flexibility in holding mediations has allowed more time to the parties without reintroducing the frequent use of examinations for discovery.

[34] For exact wording see question 16b on the Mediator's Evaluation Form in Appendix B.

[35] Separate analysis did not uncover any evidence of differences related to whether or not the mediator was assigned, whether or not the case was completely settled at mediation, or the number of defendants named in the case.

3.10 Summary Comments on Perceptions of Litigants, Lawyers and Mediators

In summary, there is broad support for mandatory mediation -- although there are important issues and questions that will need to be addressed if some form of Rule 24.1 is to be made permanent and extended beyond Ottawa and Toronto. The main point here is that there is support both for the Rule and for altering the Rule. Criticism of the Rule is greater in Toronto than in Ottawa. Mandatory mediation is an article of faith in Ottawa, a part of the fabric of litigation. Toronto is only beginning—both with case management and with mandatory mediation.

Our own review of notes and comments from the focus groups suggests both that the criticisms be taken seriously and that the issues they raise be examined systematically before changes are made to Rule 24.1.

One must also highlight the apparent contrast between the *perceptions* of a minority but sizeable proportion of the Toronto bar in particular and the empirical evidence presented earlier on the *actual* impact of mediation on timing. The use of the control group in Toronto, as reported in the first part of this chapter, revealed surprising reductions in delay for precisely those types of cases in which early mandatory mediation was anticipated to be less effective (e.g. negligence, and even medical malpractice). Given that litigants seem to show somewhat greater support for mediation than do their lawyers, we should be cautious about alterations in Rule 24.1 that will unnecessarily increase time to disposition. Part of the process of seriously considering these changes should be the further analysis of caseflow data now available to the Ministry of the Attorney General.

One of the positive by-products of the current evaluation process has been the development of a data base of civil cases—and a process for analysing those data. As a result, the Civil Rules Committee has the capability of examining possible effects of changes in Rule 24.1, and should use that capability.

Chapter 4: The Cost of Mediated Litigation

4.1 Introduction

Considering the costs of litigation is essential to a full evaluation of the Mandatory Mediation Program, since one of the objectives of the program is to reduce those costs by introducing an early opportunity for settlement. Yet topics involved in addressing the costs of litigation are some of the most difficult to research, since the bulk of those costs is private, and data from the Ministry of the Attorney General can only measure them indirectly if at all.[36]

For example, it has been argued that settling cases earlier in the process would reduce the costs associated with examination for discovery, and if those costs are substantial enough, the savings in cases that do settle at an early mediation would more than balance the additional cost of a mandatory mediation session in all cases. However, this remains an empirical question—one that can only be answered with information about the actual practices of lawyers in Ottawa and Toronto.

For the purposes of this evaluation, the two chief sources of relevant information on how mandatory mediation has affected the cost of litigation are:

- The focus groups of lawyers held in Ottawa and Toronto in October 2000, and
- Part B of the questionnaires distributed to a sample of lawyers and litigants in Ottawa and Toronto throughout the life of the pilot project.

The questionnaires were distributed at the mediation session, and respondents were asked to fill out Part B only after the disposition of their case.

This chapter will report a number of the relevant views and conclusions of lawyers in the focus groups. It will then report the more specific findings from the questionnaires, all of which focused on specific cases.

The initial overall conclusion from the sources used for this evaluation is quite clear: when cases settle at or soon after the mandatory mediation, litigants save a substantial amount of money.

4.2 Views of Participants

The best opportunity to discuss how mandatory mediation has affected the cost of litigation was in focus groups organized by lawyers in Ottawa and Toronto. (Mediators also met in focus

[36] Litigants and lawyers tend to keep information about legal fees confidential unless the costs are assessed; in turn, even MAG data on assessments have been difficult to use with any degree of validity.

groups during the same period, but their attention centred on issues surrounding mediator's fees and expenses.)

4.2.1 Ottawa

Comments such as those shown in Figure 4.1 clearly demonstrate that Ottawa lawyers felt strongly that mandatory mediation had reduced litigation costs.[37]

Figure 4.1:
Selected Comments from Ottawa Lawyers' Focus Group (or notes from session reporters) – regarding mediation's reducing costs

"It was unanimous [among lawyers in one of the sub-groups] that, overall, mediation had the effect of reducing costs of litigation."

"Even in cases which ultimately proceed to trial, mediation is often effective in narrowing issues and, in any event, the additional costs of mediation are minimal in comparison to overall costs of going to trial."

"Some of the cases identified by the group as particularly amenable to mediation include employment law cases, simple personal injury cases, estate disputes, and other cases where there is some measure of flexibility in terms of crafting a settlement."

"In general, there was a consensus that the mediation process does result in a decrease in overall costs. Costs are most likely to be decreased in the simpler cases; for example, those that deal with quantum of damages rather than establishing liability. It was generally agreed that even for cases that did not settle at mediation, there is an increased likelihood that cases will then settle either at a settlement conference or at a judicial pre-trial. It is very difficult to put an actual dollar value of the costs saved by settling earlier at some point in the overall process, as this is somewhat intangible, but there was general agreement that there is a cost saving."

At the same time, (as illustrated by the comments in Figure 4.2) Ottawa focus group members expressed cautions and articulated reservations:

Figure 4.2:
Selected Comments from Ottawa Lawyers' Focus Group (or notes from session reporters) – regarding caveats related to mediation's reducing costs

"The exception [to the general cost saving] occurs in those cases where the other side is clearly not willing to settle. In these cases, the mediation is a waste of time and results in increased costs, adding $2,000. to $3,000. to the process. The general experience of participants was that motions to exempt from mediation were very rarely used, although some participants had had them granted."

"The overall consensus was that if a mediation had absolutely no effect on the overall process, it did add costs to the case, but this is a very rare occurrence. Even a failed mediation will generally result in a positive monetary impact somewhere down the line. At the very least, the process might be useful where the parties were unfamiliar with each other. Examples were given where second mediations have been held and were successful."

"One risk of mediation identified by the group was that if mediation takes place too early in the process and/or parties at the table are not prepared to consider settlement, it can have the effect of hindering the potential for future settlement."

[37] As is done elsewhere in this report, quoted comments from interviews and focus groups are presented in a separate table – in part to emphasize that they may be individual opinions and therefore do not have the weight of results emanating from representative samples of respondents.

Interviews with key persons in the Ottawa mediation scene reinforced the lawyers' views. One respondent observed that costs have generally been reduced, noting that while insurance companies were initially fearful when mandatory mediation began in Ottawa under the Practice Direction, their costs have been reduced significantly. Lawyers also found their costs were reduced, they were getting more business, and hence were making more money.

When asked about instances where Rule 24.1 resulted in increases in costs, one respondent cited some personal injury cases, but then noted that even some medical malpractice cases have had costs reduced as doctors and patients come face-to-face in mediation. Similarly with some commercial cases, the respondent observed that when the president of a corporation sits down with a supplier to mediate, they may well settle if they want to continue to do business together in the future.

Pretrial practice has changed under mandatory mediation, according to court observers. One respondent said that motion costs have totally disappeared. Another argued that discoveries are not essential before mandatory mediation if there has been proper disclosure with exchange of documents; even when settlement does not occur at mediation, discoveries can be shortened or even eliminated. Another observed that parties sometimes do "mini-discoveries" (much shorter than full discoveries) before mediation.

One respondent argued further that mandatory mediation, by generating cash flow for lawyers through earlier settlements in a substantial portion of cases, has promoted "real access to justice", because lawyers can now take cases for plaintiffs without requiring a retainer. That is, when lawyers realize there is a 50-50 chance that the claim might settle at mediation rather than having to wait three to five years, they are more likely to take it on. "Everyone is telling me that mediation is certainly adding to front-end costs but they are all saying that overall the clients are saving money and cash flow has never been as good."

4.2.2 Toronto

As shown by the comments in Figure 4.3, the responses of Toronto lawyers in their focus groups were much less positive. While many comments were similar to those made in Ottawa, they were accompanied by less optimism, and a sense that benefits had not emerged as clearly:

Figure 4.3:
Selected Comments from Toronto Lawyers' Focus Group (or notes from session reporters) – regarding mediation's reducing costs

"If the case settles, mediation has been a cost-saving mechanism; if the case does not settle, the mediation has increased the expense of litigation.

"Mediation costs on average between $3,000-$5,000 per party.

"Mandatory mediation adds an additional $5,000 in cost to an action. It is rarely offset by cases that settle. Some lawyers commented that not enough cases settle through mandatory mediation to offset this cost.

"Another lawyer commented that the cost of mediation per case to her firm was in the range of $3,000 to $5,000. Another lawyer commented that he incurred $10,000-$15,000 less in fees by resolving the case at mediation.

"Many lawyers were uncertain as to whether mandatory mediation saves money. If the specific case settles at mandatory mediation, then there is clearly a cost saving but overall looking at all of their cases they could not say that the Rule provided a saving of costs across the board.

Figure 4.3:
Selected Comments from Toronto Lawyers' Focus Group (or notes from session reporters) – regarding mediation's reducing costs

"Some plaintiff's counsel said they like the early mediation and don't mind the cost because if they have a questionable case, they learn about it early and don't finance it all the way to trial.

"Plaintiff's counsel felt that it was unfair to plaintiffs because their lawyers fund the mediation and then convince their clients to settle claims that they might not otherwise settle because the disbursement fund has run out earlier or the lawyer himself feels financially strapped.

One counsel who acts for plaintiffs reports that the majority of cases do not settle at mediation and as a result the Rule represents a 'monumental cost to their firm.'

"In the wrongful dismissal practice, the Rule clearly reduces costs for clients because of the high rate of success at the mediation.

"There was a general recognition that the mandatory mediation/case management system assists parties in scheduling which indirectly reduced the administration costs to the law firm since scheduling the litigation is easier.

"Discoveries are more expensive than mediation for sure.

"Mandatory mediation forces the lawyer to turn his or her mind to the file earlier. This, however, causes you to invest time and money sooner than you otherwise would. You may settle the case earlier but it is not clear that it costs the client less money. You may be doing work on a case that you otherwise would have done later. Therefore, the same money is being spent.

"There is an assumption that mediation is good for cost of litigation but no one has any stats to back this assumption up."

4.2.3 Comparison of Legal Costs in Ottawa and Toronto

The benefits of mandatory mediation are clear and emphatically positive to Ottawa lawyers, but similar benefits are not yet visible to their counterparts in Toronto. For the Toronto bar, the overall advantage of mandatory mediation is still unproven.

Another observation that emerges from a review of discussions in the focus group is that higher costs of mediation are reported in Toronto than in Ottawa. Ottawa lawyers report $2,000 to $3,000 in additional costs; Toronto lawyers report a range of $3,000 to $5,000. Whether costs are higher in Toronto because the process is less familiar, and may therefore decline somewhat over time, or whether the cost of legal services are higher across the board in Toronto is an empirical question well beyond the scope of this evaluation. However, if the additional cost of mediation remains higher in Toronto than in Ottawa, mandatory mediation may face more sustained skepticism there.

4.3 Evaluation Questionnaire Results

Focus groups are useful as a barometer to measure the feelings of those with special expertise or greater experience in a particular area. But focus group participants are necessarily generalizing from a variety of specific experiences. The questionnaires answered by lawyers and litigants in a sample of mediation sessions, on the other hand, asked those respondents only about the specific case that was subject to the mediation.

What is reported in this section are responses by lawyers and litigants in questionnaires that they were asked to fill out only after their specific case had reached a disposition. Thus, in most (but not all) cases the matters had settled at the mediation, and in any event, no case could have taken more than two years to resolve.

However, even though the total number of responses is smaller, and the groups of lawyers and litigants less representative,[38] the results are remarkable. **Both Ottawa and Toronto report cost savings. And litigants as well as lawyers cite real reductions in the cost of litigation.**

First, litigants were asked whether the mediation had any impact on reducing costs. As shown by Figure 4.4, a clear majority of the litigants who answered the question—whether their cases were in Ottawa or Toronto--said that mediation had a major positive impact on reducing costs. In fact, 85% of the 274 responses reported either some or major positive impact. Only 11 responses were negative, six reporting "some negative impact," and five reporting "major negative impact." Interestingly (in light of the Ottawa and Toronto focus group discussion highlighted above), negative responses of Ottawa and Toronto litigants are virtually the same (5 in Ottawa [4.8%] and 6 in Toronto [3.6%]).

Figure 4.4.
Impact of Mediation on Reducing Costs to Litigants: Responses of Litigants after Disposition of Case

Impact	Ottawa	Toronto	Total
Major Positive	62%	54%	57%
Some Positive	24%	30%	28%
No Impact	3%	5%	4%
Some Negative	3%	2%	2%
Major Negative	2%	2%	2%
Don't Know	7%	7%	7%
Total Number	105	169	274

Total number of questionnaires returned: Ottawa 112, Toronto 196, a total of 308.

Figure 4.5 reports responses by lawyers to a similar question: "Were there any savings to your clients as a result of mandatory mediation?" Once again, responses are highly positive, and while Ottawa lawyers are more likely to report "substantial savings," both Toronto and Ottawa lawyers identify at least some savings in a similarly high percentage of the cases (80% in Ottawa and 78% in Toronto).

On the negative side, only four Ottawa responses identified "some increase" in cost to the client, while Toronto lawyers reported "some increase" in 15 cases and "a substantial increase" in five cases.

[38] Compared with questionnaires filled out after the mediation regardless of whether or not a disposition had been reached.

Figure 4.5.
Impact of Mediation on Reducing Costs to Clients:
Responses of Lawyers after Disposition of Case

Savings	Ottawa	Toronto	Total
Yes, substantial	51%	34%	40%
Yes, some	29%	44%	39%
No difference	2%	6%	5%
No, some increase	2%	5%	4%
No, a substantial increase	0%	2%	1%
Not sure	3%	4%	4%
No response	12%	4%	7%
Total Number	180	298	478

Note: These are answers to the question: "Were there any savings to your clients as a result of mandatory mediation?"

Taken together, Figures 4.4 and 4.5 seem to show overwhelming evidence of cost savings in litigation under mandatory mediation. However, as noted above, these responses came primarily in cases where settlement occurred at or just after the mediation session. At the same time, however, responses were checked to see whether cost savings occurred only when the case settled at mediation (and whether increased costs occurred only when no issues in the case were settled).

That relationship is not as clear as we would have expected – in large part because the numbers of responses was relatively small.[39]

Nonetheless, while cost savings do not occur in all cases settled at mediation, they still occur in an overwhelming majority: 81 of the 90 Ottawa cases in which litigants reported cost savings (and 129 of the 145 Ottawa cases in which lawyers reported cost savings) were completely settled at mediation. In Toronto, the analogous figures were 130 out of 143 litigants and 219 out of 233 lawyers.

Thus settlement at mediation clearly reduces litigation costs. However, because data were available for so few cases that did not settle, one cannot conclude that litigation costs will increase when settlement does not occur.[40]

If future data were gathered from cases that did not settle at mediation, one could see which pattern emerges: the one expected by the Ottawa focus groups (mediation reduces costs even when nothing is settled) or the one expected by the Toronto focus groups (mediation has a negative or neutral impact when there is no settlement). In the early returns reported here, Ottawa's expectations are visible, and Toronto's results could go either way.

---

[39] Litigants in three Ottawa cases and nine Toronto cases in which mediation settled no issues still reported a positive impact on reducing cost. Conversely, three of the five Ottawa cases in which litigants reported a negative impact of mediation on reducing costs had actually been settled at the mediation. In Toronto, two of the six negative cases had been settled at the mediation. Lawyers' answers were similarly mixed. Lawyers reported cost savings in eight cases in Ottawa and eight in Toronto in which no issues were settled at all in the mediation—and nine of the 16 reported substantial savings. Conversely, two of the four Ottawa cases in which lawyers reported an increase in cost had been settled at mediation, and in Toronto the figure was eight out of 20.

[40] Even in Toronto, where lawyers reported the most cost increases, they reported increases in 12 cases that were not resolved at mediation, but also reported savings in another 9 such cases. (Ottawa lawyers reported savings in 9 such cases, but increases in only two.)

The most dramatic way to document the cost savings to litigants can be derived from another question in the sample survey of Ottawa and Toronto lawyers. After being asked whether there were savings to their clients (Figure 4.5), lawyers were asked to specify the approximate amount of those savings. The question provided a set of 16 different intervals; the first four were at $500, the next eight at $1,000, and the last four at $5,000 and $10,000. The question was designed to encourage respondents to be more precise about savings that did occur. Apparently as a result, fewer lawyers answered this question than the total number who had reported cost savings in the previous question (10 fewer in Ottawa and 26 fewer in Toronto).

A total of 343 lawyers did specify cost savings, and the results are shown in full in Figure A4.6 in Appendix A and summarized here in Figure 4.6. Those results were equally impressive in both Ottawa and Toronto. While 25% of the responses estimated the savings at $4,000 or less, lawyers in both cities reported cost savings of more than $10,000 in 37% of the cases. In 27 cases (9 in Ottawa and 18 in Toronto), representing 8% of the total, lawyers reported savings to their clients of over $30,000.

If the lower dollar figure were taken in each range shown in Figure A4.6 (in order to make the most modest estimate of the cost savings reported by the lawyers in these cases), civil litigants have saved over $3 million in these 343 cases alone. While these cost savings would have to be reduced by the additional costs reported in other cases, it definitely appears that a net savings to litigants in both Ottawa and Toronto courts will emerge from the Mandatory Mediation Program.

Figure 4.6 Approximate Amount of Savings to Clients As Reported by Lawyers after Disposition of Case

Amount of Savings	Ottawa	Toronto	Total
$0 to $1,500	9 (7%)	17 (8%)	26 (7%)
$1,501 to $4,000	25 (18%)	36 (17%)	61 (18%)
$4,001 to $10,000	51 (37%)	76 (36%)	127 (37%)
$10,001 to $20,000	34 (25%)	46 (23%)	80 (23)
$20,001 to $30,000	8 (6%)	14 (7%)	22 (6%)
Over $30,000	9 (7%)	18 (9%)	27 (8%)
Total Responding	136 (76% of all surveys returned)	207 (69% of all surveys returned)	343 (72% of all surveys returned)
Surveys Returned	180	298	478

4.4 The Duration of Mediation

The chapter on litigation costs in the 13-Month Interim Report did not benefit from the focus group discussions and questionnaire responses. As a result, it attempted to assess whether mandatory mediation affected litigation costs by looking at information from the Mediator's Reports on the number of mediation sessions and the length of the first mediation. The initial working assumption was that mediations that last longer could be more costly to litigants.

In fact, it is quite likely that exactly the opposite conclusion is warranted.

First, consider the actual time taken in mediation. Cases with more than one mediation session are rare. In Ottawa, only 23 of the 1,111 completed mediations included a second session (2.1%). In Toronto, 74 of 1,957 mediations included more than one session (3.8%), a slightly

higher incidence, with 63 mediations having two sessions, eight mediations having three sessions, two having four sessions, and one extending to six mediation sessions.[41]

However, it is fairly common for the first mediation session to last more than the three hours set out in Rule 24.1. As shown in Figure 4.7, close to half of the mediation sessions in Ottawa, and more than one-third of the sessions in Toronto, last longer than the required three hours. (Conversely, one-sixth last less than two hours.)

Figure 4.7: Duration of First Mandatory Mediation Session

Duration	Ottawa	Toronto
Zero	11%	1%
0-2 hours	15%	20%
2-3 hours	30%	45%
3-4 hours	25%	19%
Over 4 hours	19%	16%

Given the variation in the duration of the first mediation session, it should be possible to see whether the settlement rates vary depending upon how long the session lasts. Figure 4.8 summarizes the findings (shown in detail in Figure A.4.2 in the Appendix). It shows that in both Ottawa and Toronto, settlements increase as the duration of the mediation session increases.

Figure 4.8
Percentage of Cases Settled within 7 Days of Mediation by Duration of First Mandatory Mediation Session

Duration	Ottawa	Toronto
0-2 hours	27%	16%
2-3 hours	40%	34%
3-4 hours	45%	50%
Over 4 hours	61%	64%

A direct and clear relationship emerges between the hours spent in mediation and the likelihood of a complete settlement. It is also interesting to note that while Ottawa mediations settle at a higher rate than Toronto's when they take less than three hours, Toronto mediations settle at a higher rate than Ottawa's once they last more than three hours.

While the relationship between settlement rates and duration of the mediation is quite clear, we should caution that it is not necessarily causal. The existence of the relationship does not mean that spending more time in a mediation session will more frequently produce a settlement. For example, the fact that sessions lasting over four hours show a high settlement rate may reflect the possibility that skilled mediators are more likely to encourage parties to stay at a session if a complete settlement seems near. At the same time, the lawyers and litigants, sensing progress, may be willing to invest more time. As one Toronto litigator observed, mandatory mediation under Rule 24.1 is much cheaper than private mediation; so "once you're in, the fourth and fifth hour is money well spent."

[41] See Figures A.4.1A and A.4.1B. Interestingly, 125 Ottawa mediator's reports (over 11% of the total) show no mediation session, compared with 21 Toronto mediator's reports (only 1.1%). It would appear that mediators in Ottawa file reports when cases are settled prior to mediation, while this appears not to be the practice in Toronto.

Chapter 5: Impacts of Rule 24.1 on Dispute Resolution Outcomes

5.1 Introduction

The third major focus of the evaluation is on the impact of Rule 24.1 on the outcomes of the dispute resolution process.

Section 5.2: Progress on Reaching a Complete Settlement

One of the key expectations in introducing Rule 24.1 was that a significant number of cases would be completely settled during mandatory mediation. Complete settlement is particularly important since it represents an end to the court litigation process and is likely to maximize the cost savings.

At the outset it is important to note that before the introduction of mandatory mediation, already over 90% of cases were eventually settled or abandoned. It would therefore have been extremely optimistic to expect that the introduction of mandatory mediation would have a significant impact on the total rate of settlement. However, it *was* expected that mandatory mediation at an early stage in the court litigation process would result in a higher percentage of cases being completely settled earlier in the process. These earlier settlements would in turn be expected to decrease the costs of litigation and increase litigants' satisfaction with both the litigation outcome and the litigation process.

This section explores a number of specific questions associated with this objective of the Rule.

- What is the likelihood of cases being settled completely at mediation?
- Is there any evidence that settlement rates have changed since the introduction of Rule 24.1?
- Have there been changes in rates of complete settlement since the introduction of Rule 24.1?
- Does the likelihood of settlement differ between Ottawa and Toronto?
- Are certain groupings of cases more likely than others to completely settle at mediation? Can those groupings be identified -- to allow policy and operational analysts to focus their efforts in developing improvements to Rule 24.1?

Section 5.3: Other Impacts on Dispute Resolution Outcomes (i.e. if the case has not completely settled)

Advocates of mediation argue that whether or not a complete settlement is actually reached is only one of the potential benefits of mandatory mediation. This section explores a number of specific questions addressing whether or not these other benefits have been realized:

- Even though the case was not completely settled, was it partially settled?
- More specifically, was progress made on the resolution of different types of substantive issues – either those listed on the statement of issues or others raised at the mediation session?
- Did the mediation have other impacts that would reduce the costs of, or speed up, or improve the quality of later stages of litigation?

Section 5.4: Satisfaction of the Parties with Mediation Outcomes

Irrespective of the *actual* rates of complete or partial settlement, the continued viability of the Rule will be affected by the extent to which different participants in the litigation process *perceive* mandatory mediation to have beneficial impacts on dispute resolution outcomes.

Section 5.4 therefore addresses issues such as:

- To what degree do participants in the litigation process perceive that mandatory mediation results in a fair and appropriate outcome?
- Do these perceptions differ among mediators, litigants and attorneys?
- Do these perceptions differ among different types of cases?

Section 5.5: Summary of Major Conclusions and Recommendations and Directions for Further Investigation

The chapter concludes with a discussion of proposed next steps in improving the design and operation of the Rule.

The analysis in this chapter relies on data from a number of sources including:

- ongoing Ministry automated court information systems (i.e. Access databases maintained by the Local Mediation Coordinators and the Sustain data base maintained by the ministry for the Toronto and Ottawa courts),
- specially designed evaluation questionnaires distributed to mediators, lawyers and litigants involved in a sample of individual mediations,
- individual interviews with representatives of all key stakeholder groups, and
- four focus groups held with mediators and lawyers in Toronto and Ottawa.

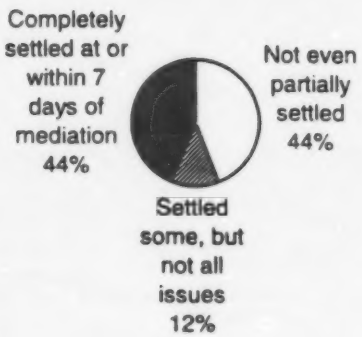
5.2 Success in Reaching Complete and Partial Settlement

5.2.1 Overall Rates: Comparison of Ottawa and Toronto

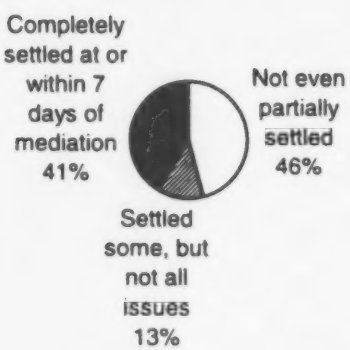
Figure 5.1 begins by displaying the overall settlement rates – separately for the 1,111 Ottawa and 1,957 Toronto mandatory mediations held under Rule 24.1 from January 4, 1999, through November 30, 2000.[42, 43]

Figure 5.1

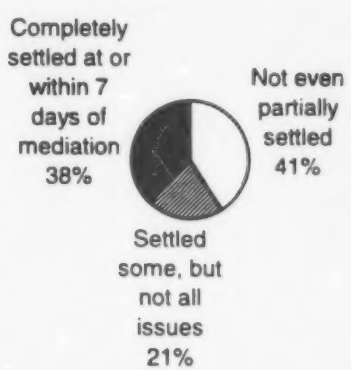
Ottawa: Including Simplified Rules



Ottawa: Excluding Simplified Rules



Toronto



[42] The analysis and charts in this chapter are based on the more detailed statistics shown in Figures 5.1–5.3 in Appendix A.
[43] Specific statistics and numbers shown in this report may differ slightly from those provided in other available reports such as the Monthly Status Reports of the Ministry of the Attorney General. These minor differences are to be expected given the slightly different time periods covered, the variations in definitions used, or the treatment of cases with missing data on all or some of the variables.

Even these simple initial findings have important implications from both a policy and operational perspective.

First, and perhaps most important, the statistics show that **a significant proportion of cases – about four out of every 10 – are completely settled at or within seven days of mediation.** In another one or two out of every 10 cases, some issues are settled, but not all.

Second, one might expect that the Ottawa's 1997-98 experience with mandatory mediation for all cases under the Practice Direction would result in Ottawa mediation outcomes significantly different from those in Toronto. However – especially when one uses comparable data by excluding the 262 Simplified Rules mediations from the Ottawa mediations – there are more similarities than differences between the results for the remaining 849 Ottawa mediations and the 1,957 Toronto mediations.

Third, again in both Toronto and Ottawa, in about four out of every 10 cases, not even a partial settlement (i.e. settlement of at least one issue) occurred (46% in Ottawa: 41% in Toronto). Thus, although a sizeable percentage of mediations result in a complete settlement, an equally sizeable percentage do not even partially settle. Put another way – especially in light of the additional findings regarding partial settlements presented later -- although there is strong evidence that the current mandatory mediation Rule was very beneficial in a high proportion of the caseload, there may also be room for improvement to the Rule with respect to an equally high proportion of the caseload. This "room for improvement" exists in both Ottawa and Toronto.

Fourth, it is also interesting (see detailed data in Figure A5.2, Appendix A) that, while complete settlements typically occurred at the mediation session itself, a small but significant number of these complete settlements happened during the seven days following the mediations – 4.1% of all cases in Ottawa (or 9.3% of all complete settlements shown) and 3.5% in Toronto (9.1% of all complete settlements shown). This finding is of interest since it addresses the question of when one might expect the initial settlement results of a mediation, and therefore how much time the Rule should allow for submission of such data (i.e. through the Mediators' Report required under Rule 24.1).

5.2.2 Have Settlement Rates Changed Since the Introduction of Rule 24.1?

Chapter 3 provided clear evidence that cases in Toronto reach final disposition much earlier under Rule 24.1 than they were before the introduction of the Rule. This finding applied to all case types.

The impact of Rule 24.1 both on costs to the litigants and the courts, and on the satisfaction of litigants, would be even stronger if the Rule were to result in an increase in the percentage of cases that were settled or abandoned -- as opposed to being disposed through a contested court hearing.

Testing whether Rule 24.1 has had this impact is thus a major task of this chapter.

However, there are a number of factors that make measurement of any such impact difficult.

- First, as noted earlier, given that well over 90% of civil cases are disposed without a trial, it would be very optimistic to expect that the introduction of mandatory mediation would have a discernible impact on the trial rate.
- Second, a relatively long time period is required for a case to move from first defence to disposition in the Ontario courts. For instance, data specially collected for the "Toronto Control Group" (of cases defended in 1998) found that 66% of those cases had not been disposed within 12 months of defence and 27% had not been disposed within even 24 months of defence. Since this evaluation had less than 23 months to follow up the first cases defended under Rule 24.1 – and had only 11.5 months follow-up on average – any precise estimates of ultimate settlement rates for Rule 24.1 cases would have been impossible.
- Third, existing court data do not always indicate the dispositions afforded cases (e.g. whether a case is settled, abandoned, or disposed at a contested hearing) – for cases either before or after the introduction of Rule 24.1.[44]

On the other hand, data especially collected for this study make possible at least an indirect comparison of settlement rates in Toronto before and after the introduction of Rule 24.1.

Specifically, statistics are available from the Mediator's Reports on whether or not a complete settlement occurred within seven days of the mediation.[45] Given the time standards under the Rule (and the evidence presented in Chapter 3), it would be reasonable to expect that the vast majority of any settlements that did occur at or immediately following mediation would happen within three to six months of first defence. (53% of the Toronto mediations occurred within 90 days (3 months) of first defence and 86% of the Toronto mediations occurred within 150 days (roughly 5 months) of first defence).

The evaluation also collected data from the "Toronto Control Group" on the timing and type of disposition for cases that were litigated before the introduction of Rule 24.1. From that data we could calculate the percentage of cases that were settled within three months and within six months of defence.

Finally, by combining both the Mediator's Report and Control Group data with additional data from the court's Sustain automated information system, we could calculate settlement rates separately for different types of cases.

The results are shown in Figure 5.1b.

Given the fact that over 86% of the mediations under Rule 24.1 occurred *before* six months had elapsed since the date of defence (54% within three months), the results in Figure 5.1b clearly support the assertion that **Rule 24.1 has had a significant impact on the percentage of Toronto cases that are completely settled early in the litigation process.**

Moreover, this positive impact of the Rule is seen **in all 10 of the categories of cases examined**. In fact, except for wrongful dismissal and real property cases, the percentage of cases settled under Rule 24.1 within seven days of the mediation is more than double the percentage settled

[44] This challenge also makes using the Ministry's Sustain data to compare types of settlement either during the Practice Direction or after the introduction of Rule 24.1 in Ottawa problematic.

[45] The credibility of the information on settlements from the Mediator's Report is assured by the practice of having the mediator share the Report with the parties. In addition, the Local Mediation Co-ordinator would be notified if there were a concern about the outcome noted on the Report.

within six months prior to the introduction of the Rule. Even for wrongful dismissal cases the 47% complete settlement rate at mediation is just under double the 26% six month settlement rate prior to Rule 24.1.

Figure 5.1b: Time Specific Rates of Complete Settlement: Comparison of Pre-and Post Introduction of Rule 24.1

Case Type	Control Group Cases (Defended prior to Rule 24.1)			Rule 24.1 Mandatory Mediations
	Within 3 months of defence	Within 6 months of defence		Within 7 days of mediation
Contract Commercial	4.5%	11.8%		33%
Collection	11.9%	19.7%		41%
Medical Malpractice	0.0%	3.8%		16%
Motor Vehicle	5.0%	7.9%		39%
Negligence	6.7%	10.5%		39%
Other	4.5%	10.9%		40%
Real Property	4.0%	24.0%		30%
Trust & Fiduciary Duties	4.0%	8.0%		37%
Wrongful Dismissal	8.8%	26.4%		47%
Remaining Case Types	4.2%	4.2%		25%
Total #	791	791		1957

5.2.3 How Long Has it Taken to Achieve Current Settlement Rates under the New Rule?

As shown in Figure 5.2, there is no discernible trend over the two years in which the Mandatory Mediation Program has been in operation – in either Ottawa or Toronto – in either the percent of mediations leading to a complete settlement, or the percent of mediations in which not even a partial settlement occurs. Rather, these results show relative stability over the pilot project period.

In fact, if one were to combine the results for complete and *partial* settlement (i.e. settlement of at least one issue[46]) then Toronto mediations in fact have a *higher* total (partial plus complete) settlement rate than Ottawa Cases – i.e. 62% vs. 57%.

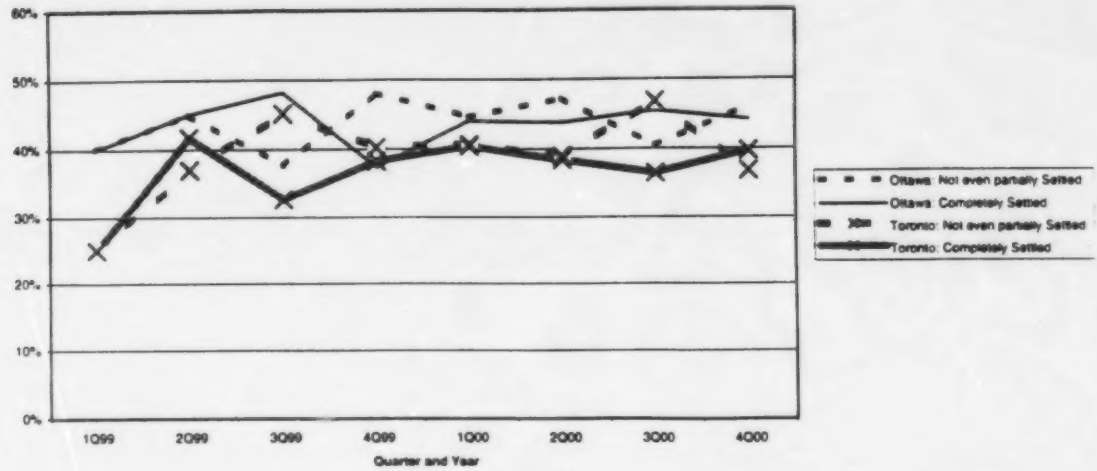
These findings show **little evidence of the need for a long learning period** before the mandatory mediation program starts achieving the level of results that would be expected after a year or two – findings that are positive with respect to extension of the program to other court jurisdictions or to a larger percentage of cases in Toronto.[47]

---

[46] Counting both issues on the Statement of Issues and other issues identified during the mediation process.

[47] It should also be noted that the settlement rate would be expected to be higher at the beginning of the implementation of mandatory mediation, because the first completed mediations tend to over-represent those who volunteer for mediation (i.e. select a mediator and schedule a session within the first 90 days), rather than those who either wait until a mediator is assigned, or seek an extension to 150 days, or both). By the end of the first year, completed mediations appear to be representative of all defended civil claims.

Figure 5.2 Trends in Rates of Complete and Not Even Partial Settlement: Toronto and Ottawa



5.2.4 Identifying Which Cases Have the Highest and Lowest Settlement Rates at Mediation

It is within the context of the above very positive findings that this chapter begins to provide evidence that could be used to improve further the operation of Rule 24.1.

For instance, attempts to amend the Rule to improve the likelihood of reaching a settlement at mediation would benefit considerably if the evaluation could identify the types of cases that were in the past either:

- Most likely to achieve a settlement at mediation, or
- Least likely to achieve a settlement at mediation.

The sections that follow begin this task. Because of the special interest expressed historically, the analysis begins with an examination of whether mediation settlement rates vary by

- Case type,
- City in which the mediation was held, and
- Combinations of case type and city.

However, it often happens that simple *bivariate* analysis of the impact of variables such as case type or city *mask* the impact of other more fundamental variables since they are really only stand-ins or proxies for those variables with which they happen to be correlated (variables such as number of defendants and previous mediation experience of the mediator). We therefore follow the initial analysis by a more detailed *multivariate* analysis of the relative impact of each of a longer list of variables – separately and in combination with each other.

5.2.4.1 Are Settlement Rates Different for Different Case Types?

When a case is filed with the court, the plaintiff or plaintiff's lawyer identifies the case as being a particular *case type*. For the current analysis, these *case types* have been combined – for Toronto

cases into the 10 categories shown in Figure 5.3b, and for Ottawa cases into the 11 categories shown in Figure 5.3.a (i.e. the 10 Toronto categories plus the Simplified Rules case type).

Those familiar with court operations and with mediation are quick to point out that within any one case type there is often considerable variation with respect to a wide range of variables that could affect the likelihood of a case's settling at mediation (e.g. amount of the claim, nature of the dispute, predisposition toward mediation and training of the parties, lawyers and mediators). Nonetheless, discussions of changes to the Rule often refer to the possibility of different procedures for different *case types*.[48]

That being the case, Figure 5.3a (for Ottawa mediations) and Figure 5.3b (for Toronto mediations) show clear variations from one *case type* to another in both rates of complete settlement (the left hand side of the figures) and rates of not even partial settlement (the right hand side of the figures).

Ottawa

As shown in Figure 5.3a, in Ottawa there is considerable variation in the likelihood of a complete settlement at mediation. Three groups of case types appear:

- Four case types that have a 50% or greater chance of complete settlement at mediation (i.e. wrongful dismissal, negligence, Simplified Rules and real property);
- Three case types that have a likelihood of complete settlement between 40 and 43% (motor vehicle, medical malpractice and other); and
- Four case types that have relatively low likelihood of complete settlement (between 21% and 36%) (contract/commercial, collection, remaining case types and trust and fiduciary duties).

Wrongful dismissal cases and negligence cases in Ottawa have the highest likelihoods of complete settlement at mediation (both 54%) and trust and fiduciary duties cases are the least likely to reach a complete settlement (21%).

There is also considerable variation in Ottawa statistics measuring the likelihood of cases not even partially settling at mediation. The chances of neither a partial nor a complete settlement occurring is

- especially high (53% to 54%) for medical malpractice, contract/commercial and trust and fiduciary duties cases, while chances of such an outcome are
- especially low (32% to 35%) for real property and negligence cases.

Toronto

As shown in Figure 5.3b, in Toronto there is also considerable variation in the likelihood of a complete settlement at mediation. Again three groups of case types appear. However:

- Only one case type has a chance of complete settlement at mediation close to 50% (wrongful dismissal);
- Five case types have a likelihood of complete settlement near 40% (i.e. between 37% and 41%) (collection, other, motor vehicle, negligence and trust & fiduciary duties); and

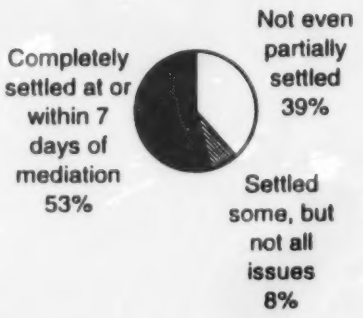
[48] We are aware, for example, that lawyers report early mediation to be effective in simple contract/commercial claims, but less effective in complex commercial cases, and that cases with multiple defendants vary in complexity depending upon whether those defendants are represented by one lawyer or two or more different lawyers. The Ministry's Sustain data system does not allow us to track either of these variations.

Figure 5.3a Outcomes of Ottawa Mediations Held Variations by Case Type

% of Cases Completely Settled Within 7 days of Mediation

- **Considerable Variation by Case Type**

Ottawa Wrongful Dismissal



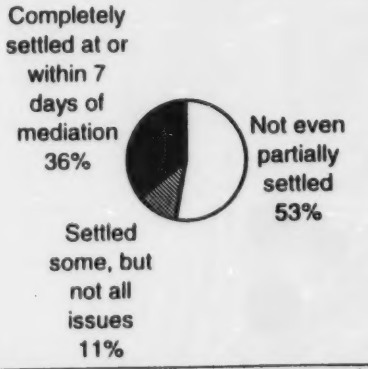
More than 4 percentage points above Average (44%)	
1. Wrongful Dismissal (119)	54%
2. Negligence (79)	54%
3. Simplified Rules (262)	51%
4. Real Property <22>	50%
Within 4 percentage points of average (44%)	
5. Motor Vehicle (127)	43%
6. Medical Malpractice <15>	40%
7. Other (117)	41%
More than 4 percentage points below average (44%)	
8. Contract Commercial (230)	36%
9. Collection (94)	34%
10. Remaining Case Types <27>	26%
11. Trust & Fiduciary Duties <19>	21%

(Number of cases shown in brackets. Angle brackets = less than 30 cases.)

% of Cases Not Even Partially Settled at Mediation

- **Considerable Variation by Case Type**

Ottawa Contract Commercial



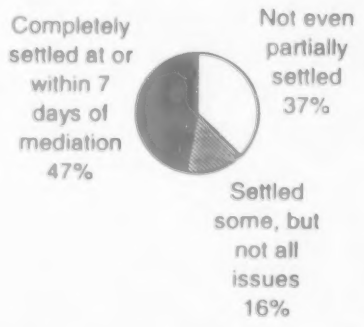
More than 4 percentage points below average (44%)	
1. Real Property	32%
2. Negligence	35%
3. Simplified Rules	39%
4. Wrongful Dismissal	39%
Within 4 Percentage Points of Average (44%)	
5. Motor Vehicle	43%
6. Collection	47%
7. Other	48%
More than 4 percentage points above average (44%)	
8. Remaining Case Types	52%
9. Trust & Fiduciary Duties	53%
10. Contract Commercial	53%
11. Medical Malpractice	54%

Figure 5.3b Outcomes of Toronto Mediations Held Variations by Case Type

% of Cases Completely Settled Within 7 days of Mediation

- **Considerable Variation by Case Type**

Toronto Wrongful Dismissal



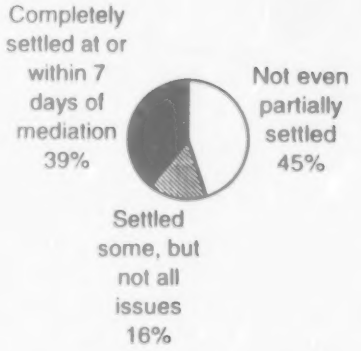
More than 4 percentage points above average (38%)	
1. Wrongful Dismissal (198)	47%
Within 4 percentage points of average (38%)	
2. Collection (194)	41%
3. Other (339)	40%
4. Motor Vehicle (508)	39%
5. Negligence (238)	39%
6. Trust & Fiduciary Duties <43>	37%
More than 4 percentage points below average (38%)	
7. Contract Commercial (340)	33%
8. Real Property <40>	30%
9. Remaining Case Types <20>	25%
10. Medical Malpractice <37>	16%

(Number of cases shown in brackets. Angle brackets = less than 30 cases.)

% of Cases Not Even Partially Settled at Mediation

- **Moderate Variation by Case Type**

Toronto Negligence



More than 4 percentage points below average (41%)	
1. Collection	34%
Within 4 Percentage Points of Average (41%)	
2. Wrongful Dismissal	37%
3. Other	37%
4. Motor Vehicle	41%
5. Contract Commercial	44%
6. Remaining Case Types <20>	45%
7. Negligence	45%
8. Real Property <40>	45%
More than 4 percentage points above average (41%)	
9. Trust & Fiduciary Duties <43>	49%
10. Medical Malpractice <37>	62%

- Four case types that have relatively low likelihood of complete settlement (33% or less) (contract/commercial, real property, remaining case types and medical malpractice).

As in Ottawa, wrongful dismissal cases in Toronto have the highest likelihood of complete settlement at mediation (47%), although negligence cases in Toronto have a considerably lower chance of complete settlement than in Ottawa (i.e. 39% vs. 54%). In Toronto, medical malpractice cases are the least likely to reach a complete settlement (16%).

If medical malpractice cases are excluded, there is only moderate variation in Toronto statistics measuring the likelihood of cases not even partially settling at mediation. The chances of neither a partial nor a complete settlement occurring is:

- especially high (62%) for medical malpractice,
- but the remaining 9 case types have likelihoods in the modest range between 34% and 49%.

5.2.4.2 Are Mediation Settlement Rates (for Different Case Types) Different in Toronto and Ottawa?

Given the prior experience of Ottawa with mediation under the Practice Direction, the more direct comparisons of Ottawa and Toronto mediation settlement results in Figure 5.4a and Figure 5.4b are of special interest.

Figure 5.4a compares Ottawa and Toronto with respect to the likelihood of complete settlement at mediation for different case types. The overall impression is that the similarities outweigh the differences. Marked differences in the likelihood of complete settlement are evident:

- for only one of the relatively high volume case types:
  - (39% vs 54%) for Toronto and Ottawa negligence cases, and
- for only three of the low volume case types
  - (37% vs 21%) for Toronto and Ottawa trust and fiduciary duties cases,
  - (30% vs 50%) for Toronto and Ottawa real property cases, and
  - (16% vs 40%) for Toronto and Ottawa medical malpractice cases.

Figure 5.4b compares Ottawa and Toronto with respect to the likelihood of neither a partial nor complete settlement at mediation for different case types. The overall impression that the similarities between Toronto and Ottawa outweigh the differences is even more pronounced. For 8 of the 10 comparable case types, the likelihoods are within 10 percentage points. Marked differences in the likelihoods of neither a partial nor a complete settlement are evident:

- for only one of the relatively high volume case types:
  - (34% vs 47%) for Toronto and Ottawa collection cases, and
- for only one of the low volume case types:
  - (34% vs 47%) for Toronto and Ottawa real property cases.

Furthermore, one of the most interesting findings is that collection cases in Ottawa were harder than average to settle—certainly a surprise, and a sharp contrast with Toronto. Also not expected was the finding of a settlement rate for medical malpractice cases similar to the overall average.

Figure 5.4a: % of Mediations Held in Which Outcome = "Completely Settled at or within 7 days of Mediation" : Comparison: Ottawa & Toronto

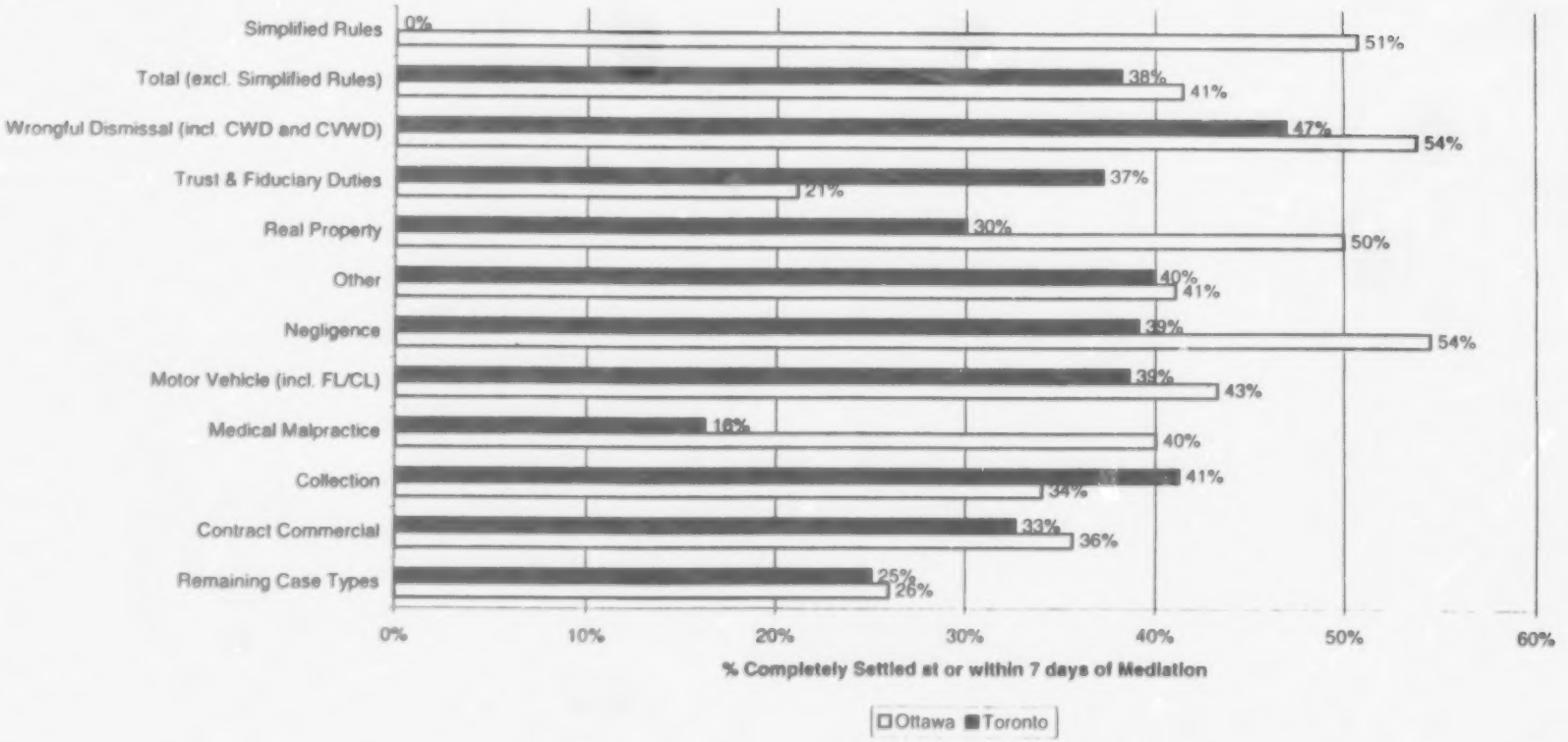
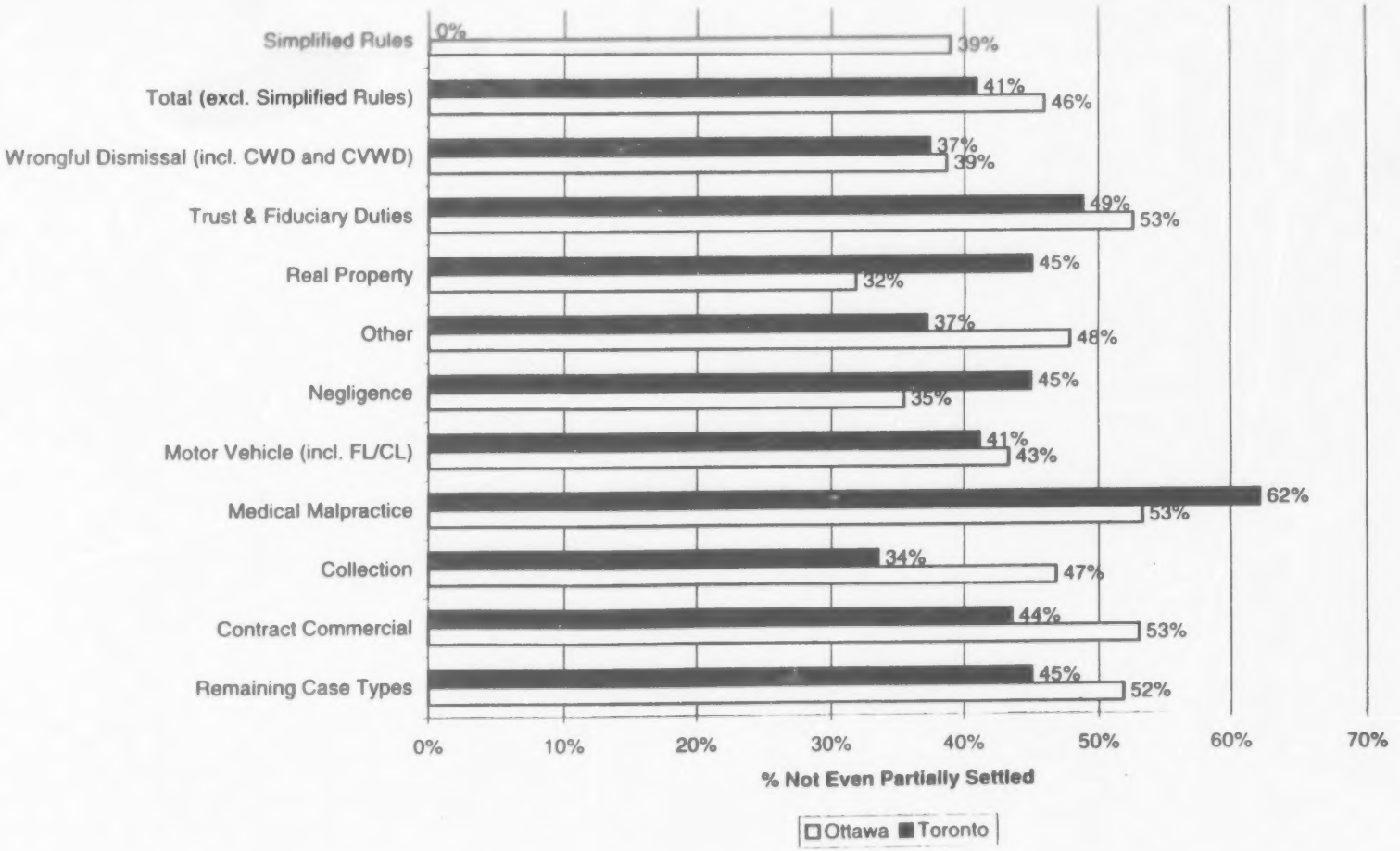


Figure 5.4b % of Mediations Held In Which Outcome = "Not even Partially Settled" : Comparison: Ottawa & Toronto



5.2.4.3 Settlement Rates for Ottawa Simplified Rules Cases

As noted earlier, Simplified Rules cases (cases between $6,000 and $25,000) are included under Rule 24.1 in Ottawa, but not in Toronto. The scope of the current evaluation does not include an exploration of whether settlement rates for Simplified Rules cases differ under case management and mandatory mediation in Ottawa and the Simplified Rule procedures in Toronto under Rule 76, which do not include case management or mandatory mediation. However, where possible this report does separate out the statistics for the Ottawa mandatory mediation cases.

These data indicate that for Simplified Rules cases in Ottawa:

- 39% were neither partly nor completely settled at mediation
- 10% settled some but not all issues at mediation, and
- 51% completely settled at mediation – higher than for most other case types under Rule 24.1.

Thus Simplified Rules cases had one of the highest rates of complete settlement under Rule 24.1 compared to other case types. Whether this result is due to mandatory mediation, or to case management, or to some other factor is not known. It should also be noted that reliable and comparable data on settlement rates for Toronto cases under the Simplified Rules were not available.

5.2.4.4 Other Factors Potentially Affecting Mediation Settlement Rates

The previous sections focused on differences in settlement rates for different case types and for mediations held in Ottawa and Toronto. Of particular interest is whether the differences and similarities observed were due to the influence of these variables per se or to other variables not considered. For instance, a certain case type might be more amenable to settlement at mediation not because of the specific type of legal issues involved, but because that case type was:

- less likely to involve contentious and intractable issues,
- less likely to involve multiple defendants,
- more likely to involve counsel more committed to and experienced in the use of mediation, or
- more likely to involve parties wishing to continue a personal or business relationship.

Unfortunately, the courts do not regularly collect data on many of the factors that may affect the likelihood of settlement at mediation. In addition, the current evaluation was also unable to collect data on many of the variables that might be relevant. On the other hand, sufficient data were available to make a significant start on the type of analysis that will eventually be required.

Specifically, the evaluation collected or had available data on the eight characteristics of mediated cases that are listed as "predictor variables" in Figure 5.5. That figure also identifies the possible values taken by each variable.[19]

[19] The related figure in Appendix B provides more technical information on each variable, including its source.

Depending on the policy or operational purpose to be addressed, one might be interested in various measures of the settlement variable to be *predicted* by these eight predictors. For this report, we used the three measures shown in Figure 5.5:

- "Summary Mediation Settlement Disposition" would be most useful for an analysis that was interested in the distribution of settlement outcomes among: no settle ment, partial settlement and complete settlement;
- "Whether Completely Settled at Mediation" would be most useful for identifying those types of cases **most** amenable to mediation;
- "Whether Not Even Partly Settled at Mediation" would be most useful for identifying those types of cases **least** amenable to mediation.

Analysis was undertaken using all three measures. However, since a major purpose of any evaluation is to identify mechanisms for improving the phenomenon being evaluated, we will in later sections focus on the last of the three.[50]

The first step was to determine whether there was a statistically significant bivariate relationship between each of the eight predictor variables and each of the three predicted settlement variables.

The results are summarized in Figure 5.6.[51, 52] (One, two or three asterisks in a cell indicate a statistically significant relationship between the two variables. The absence of an asterisk in the cell signifies that there is a strong chance any relationship that appears to exist does so only by chance.)

The relationship between the likelihood of settlement and the first two variables (city and case type) have already been discussed. Each of the others will be discussed in turn.

[50] Remembering that that the earlier "Pace of Litigation" Chapter noted that some "less amenable" case types actually had the biggest improvement in time-specific disposition rates.

[51] Given the nature of the variables, Lambda would be an appropriate test of statistical significance between the predictor and predicted variables – more specifically Lambda with the predicted variable as the dependant variable. However, since in many cases it was impossible to calculate Lambda, Pearson's Chi-Square statistic was also used.

[52] More complete results of the test of statistical significance can be found in Appendix B.

Figure 5.5 Variables Used in Segmentation Analysis of Mediation Settlement Rates

Description	Possible Values
Predicted Variable	
Summary Mediation Settlement Disposition	• Not even partly settled • Partly settled • Completely settled at or within 7 days of mediation
Whether Completely Settled at Mediation	• Not completely settled • Completely settled at or within 7 days of mediation
Whether Not Even Partly Settled at Mediation	• Partly or completely settled at or within 7 days of mediation • Not even partly settled
Predictor Variables	
City in which Mediation Was Held	• Missing • Ottawa • Toronto
Grouped Case Type	• Contract/commercial • Collection • Medical malpractice • Motor vehicle • Negligence • Other • Real property • Trust and fiduciary duties • Wrongful dismissal • Remaining case types • Simplified Rules
Mediator in Mediation Is Roster or Non-Roster	• Non-roster mediator • Roster
Mediator selected by parties or assigned by court	• Unknown • Selected by parties • Assigned by Coordinator
Number of Defendants Named in Case	• missing • one • two • three to five • six or more
Number of Plaintiffs Named in Case	• missing • one • two • three to five • six or more
Number of Rule 24.1 Mandatory Mediations Conducted by Mediator (Both Cities Combined)	• 1 to 5 • 6 to 25 • 26 to 50 • over 50
Calendar Year in which Mediation Was Conducted	• 1999 • 2000

Figure 5.6: Tests of Significance of Bivariate Relationships			
Predictor Variable	**Predicted Variables**		
	Summary Mediation Settlement Disposition	Whether Completely Settled at Mediation	Whether Not Even Partly Settled at Mediation
City in Which Mediation Was Held	*	*	*
Grouped Case Type	***	*	*
Mediator in mediation is Roster or Non-Roster	*	*	*
Mediator is chosen by parties or assigned by Local Mediation Co-ordinator	***	*	*
Number of Defendants Named in Case	*	*	*
Number of Plaintiffs named in Case	*	*	*
Number of Rule 24.1 mandatory mediations conducted by mediator (both cities combined)	***	*	***
Calendar Year in Which Mediation was Conducted			

** significant at the .05 level using the Pearson's Chi Square Statistic*
*** significant at the .05 level using the Lambda statistic*
**** significant according to both the Chi square and Lambda Statistic*

Mediator in Mediation Is Roster or Non-Roster

Mediations conducted by roster and by non-roster mediators had similar likelihoods of a complete settlement at mediation. Mediations by roster mediators were, however, more likely than were mediations by non-roster mediators to resolve some (but not all) issues [53]

Figure 5.7a Mediation Settlement Outcome by Roster

	Roster		
	Non-mediato	Roster mediato	Total
Not even settled	70	1224	1294
	53.4%	41.6%	42.1%
Settled some, not all	11	533	544
	8.4%	18.1%	17.7%
Completely settled at or within 7 days of mediation	50	1182	1232
	38.2%	40.2%	40.1%
	131	2939	3070
	100.0	100.0	100.0

Whether or Not the Mediator Was Selected or Assigned

Mediations in which the mediator was selected by the parties had a significantly higher likelihood of a complete settlement at mediation – compared to mediations in which the mediators were assigned by the Local Mediation Co-ordinator.[54] The differences were less pronounced with respect to the likelihoods of outcomes of "not even partly settled" or "partly settled".

Figure 5.7b: Mediation Settlement Outcome Whether MediatorSelected or Assigned

	Type of Mediator		
	Selected by Parties	Assigned by Coordinator	Total
Not even partially settled	782	508	1290
	40.1%	45.7%	42.1%
Settled some, but not all issues	288	255	543
	14.8%	23.0%	17.7%
Completely settled at or within 7 days of mediation	881	348	1229
	45.2%	31.3%	40.1%
	1951	1111	3062
	100.0%	100.0%	100.0%

[53] (*Significant Chi Square*).
[54] (*Significant Chi Square and Lambda*).

Number of Defendants Named in Case

The number of defendants named in a case did result in differences in the likelihood of a complete settlement at mediation – at least when comparing the likelihoods for 5 or less with the likelihoods for 6 or more.[55] Differences were not as apparent with respect to the likelihoods of the mediation resulting in neither a partial nor a complete settlement.

Figure 5.7c Mediation Settlement Outcome by Number of Defendants Named

	Number of Defendants Named				
	one	two	3 to 5	6 or more	Total
Not even partially settled	601 39.9%	374 47.5%	254 40.9%	61 42.1%	1290 42.2%
Settled some, but not all issues	247 16.4%	113 14.4%	135 21.7%	48 33.1%	543 17.7%
Completely settled at or within 7 days of mediation	659 43.7%	300 38.1%	232 37.4%	36 24.8%	1227 40.1%
	1507 49.2% 100.0%	787 25.7% 100.0%	621 20.3% 100.0%	145 4.7% 100.0%	3060 100.0% 100.0%

Number of Plaintiffs Named in Case

The number of plaintiffs named in a case was also associated with differences in the likelihood of a complete settlement at mediation – again when comparing the likelihoods for five or less with the likelihoods for six or more[56]. Differences were much smaller with respect to the likelihoods of the mediation resulting in neither a partial nor a complete settlement.

Figure 5.7d Mediation Settlement Outcome by Number of Plaintiffs

	Number of Plaintiffs Named				
	one	two	3 to 5	6 or more	Total
Not even partially settled	899 41.0%	218 44.9%	148 46.7%	26 41.9%	1291 42.2%
Settled some, but not all issues	375 17.1%	92 19.0%	56 17.7%	19 30.6%	542 17.7%
Completely settled at or within 7 days of mediation	919 41.9%	175 36.1%	113 35.6%	17 27.4%	1224 40.0%
	2193 100.0%	485 100.0%	317 100.0%	62 100.0%	3057 100.0%

[55] *(Chi-square significant.)*
[56] *(Chi-square significant.)*

Number of Rule 24.1 Mandatory Mediations Conducted by Mediator (in Both Cities Combined)

The number of mediations under Rule 24.1 which the mediator conducted (in total over the two years of the program – in Toronto and Ottawa combined) bore a statistically significant relationship to the likelihood of each of the three possible outcomes shown in Figure 5.7e[57] That is, mediators who did more Rule 24.1 mediations during the evaluation period were more likely to facilitate complete or partial settlements in any given case.

Figure 5.7e Mediation Settlement Outcome by Number of Mandatory Mediations by Mediator

	# of Mandatory Mediations by Mediator in Both Cities				
	1 to 5	6 to 25	26 to 50	over 50	Total
Not even partially settled	284 49.3%	356 39.8%	153 44.2%	456 39.1%	1249 41.9%
Settled some, but not all issues	111 19.3%	229 25.6%	44 12.7%	152 13.0%	536 18.0%
Completely settled at or within 7 days of mediation	181 31.4%	309 34.6%	149 43.1%	557 47.8%	1196 40.1%
	576 100.0%	894 100.0%	346 100.0%	1165 100.0%	2981 100.0%

It should however be noted that the causality in this strong relationship could run either or both ways. On the one hand, the more experienced mediators could be more effective in terms of facilitating a settlement. On the other hand, mediators who are selected on a frequent basis (and high frequency mediators must have been selected rather than assigned) are more likely to be selected by counsel who are more familiar with the mediation process and may be more inclined to use the mediation process as a settlement mechanism – thus leading to a higher likelihood of settlement.

Calendar Year in which Mediation Was Conducted

As shown in Figure 5.7f, with respect to mediation settlement outcome, there have been no significant differences between mediations conducted in 1999 and 2000.

Figure 5.7f Mediation Settlement Outcome by Year of Mediation

	Year of 1st Mediation Session		
	1999	2000	Total
Not even partially settled	475 42.3%	818 42.1%	1293 42.2%
Settled some, but not all issues	208 18.5%	335 17.2%	543 17.7%
Completely settled at or within 7 days of mediation	439 39.1%	791 40.7%	1230 40.1%
Total	1122 100.0%	1944 100.0%	3066 100.0%

[57] *(Chi-square significant for all three settlement indicators and lambda significant for the overall indicator and for the "neither partial nor complete settlement" indicator).*

5.2.4.5 Use of Exhaustive CHAID for Multivariate Examination of Factors Potentially Affecting Mediation Settlement Rates

The analysis presented so far in this chapter has explored the relationship between one (or at most a combination of two) predictor variable(s) and the likelihood of settlement. Such a strategy allows one to determine neither the *relative* impact of any single predictor – nor how much of the observed impact of a particular predictor is really due to the impact of that predictor and not to the impact of a second predictor that happens to be correlated with the first predictor.

To counteract these problems requires *multivariate* strategies of analysis – strategies that try within one statistical model to separate out the independent impacts of each predictor variable, independent of the impacts of other predictors also considered by the model. Multiple regression or analysis of variance are techniques often used in evaluations of this kind. However, when used to analyze certain types of variables and data with statistical properties similar to the data used in this study, multiple regression and similar techniques often require assumptions about the statistical properties of the data that are not tenable.

This evaluation instead relies on a more appropriate technique, "Exhaustive CHAID" (i.e. Chi-Square Automated Interaction Detector, see Appendix B). In lay terms, the analyst first chooses one predicted variable (e.g. whether or not the mediation results in neither a partial nor a complete settlement). Second, the analyst chooses a set of predictor variables (e.g. the eight predictor variables listed in Figures 5.5 and 5.6 earlier) – variables that would be expected to influence the predicted variable.

The CHAID technique then examines the relationships between each of the predictor variables and the predicted variable, and chooses the one which best separates the cases (here, mediations) into different groups or segments – with the groups being chosen so that each one has a value for the predicted variable (i.e. the proportion of mediations with neither a partial nor complete settlement) that is as different[58] as possible from the values of the predictor variables for other groups.

Then in a second round, each of these first-round groups is independently tested using all of the predictor variables. For each of the first-round groups -- depending on whether the required statistical relationships exist in the data – a second predictor variable is chosen to divide the first round group into two or more second-round groups. [59]

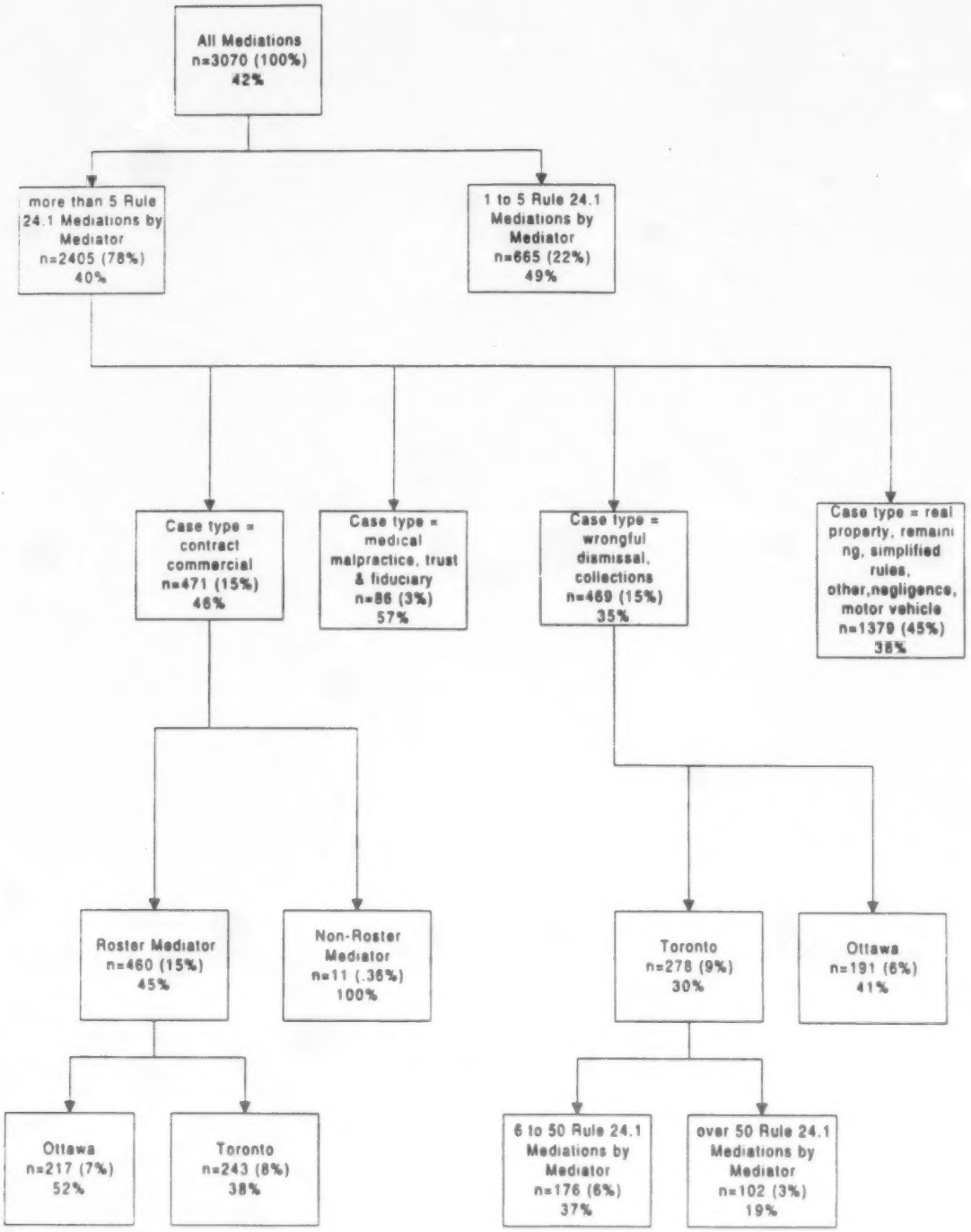
Figure 5.8 provides an overview of the results obtained when the CHAID technique was used to analyze data for this evaluation. The box at the top of Figure 5.8 shows that when all (i.e. 100%) of the 3070 mediations were taken together, 42% of the mediations had "neither a partial nor complete settlement". The first task undertaken by CHAID was to see which of the eight predictor variables listed in the first column of Figure 5.6 was most successful in splitting up the 3,070 mediations into different groups, such that there were the largest differences among the groups with respect to likelihood of "neither a partial nor complete settlement".

---

[58] CHAID also requires that these differences be statistically significant" – i.e. large enough to be unlikely to be due to chance.
[59] If the required statistical relationships do not exist, then the creation of additional segments ceases for that part of the model.

Figure 5.8

CHAID ANALYSIS OF FACTORS PREDICTING LIKELIHOOD OF NEITHER A PARTIAL NOR COMPLETE SETTLEMENT AT MANDATORY MEDIATION



"Number of Mandatory Mediations Conducted by the Mediator": The First Variable Chosen as Having a Significant Impact on Mediation Settlement Rates

As shown in Figure 5.8, using a number of statistical techniques the CHAID analysis determined that the predictor variable, "*Number of Mandatory Mediations Conducted by the Mediator*" was more efficient and effective than any of the other seven predictor variables in dividing the 3,070 cases into subgroups with the widest differences in likelihood of "neither a partial nor complete settlement". In fact, two such subgroups were defined:

- The first subgroup consisted of all 665 mediations *conducted by mediators who had one to five mandatory mediations*, plus all mediations in which the number of mediations conducted by the mediator was *unknown*. This subgroup accounted for 22% of the 3070 mediations considered – and on average had a likelihood of "neither a partial nor complete settlement" of 49%
- The second subgroup consisted of all 2,405 mediations *conducted by mediators who had 6 to 25, 26 to 50, or over 50 mandatory mediations*. This subgroup accounted for the remaining 78% of all mediations – and on average had a significantly lower likelihood of "neither a partial nor complete settlement" of 40%.[60]

The experience of the mediator conducting the mediation is thus an important factor to consider in understanding the settlement outcomes of mediations under Rule 24.1. Further research could explore issues such as: whether the results would change if data were available on all mediations (not just mediations under Rule 24.1), or if high volume mediators are strongly associated with counsel who are more adept at achieving settlement through the mediation process. Nonetheless, this finding has important implications for the certification of mediators and the development and operation of the roster.

No Further Division of the Subgroup of Mediations with "1 to 5 mediations per mediator" (or missing numbers of mediations per mediator)

The CHAID procedure was then repeated for each of the above two subgroups.

As shown in rightmost box in the second row of boxes in Figure 5.8, The CHAID technique could not find among the remaining seven predictor variables any variables that were helpful in dividing the group of mediations that had "*1 to 5 mediations per mediator*" (or missing numbers of mediations per mediator) into further groups that exhibited significantly different likelihoods of neither a partial nor a complete settlement.

In other words -- for this subgroup of 665 mediations -- knowledge of neither case type, nor the city, nor the number of defendants or plaintiffs, nor whether the mediator was chosen or assigned, nor whether the mediator was a roster or non-roster mediator, nor the year of the mediation would be helpful in better predicting whether a mediation was more or less likely to result in neither a partial nor a complete settlement.

---

[60] In this instance, the best predictor variable created two groups. This result however was dictated solely by the particular characteristics of these data. In other instances, more than two groups could be created.

Mediations Conducted by Mediators with Six or More Mandatory Mediations Best Segmented by Knowledge of Case Type

The CHAID procedure did however determine the subgroup of mediations *conducted by mediators with six or more mandatory mediations*) could be segmented further – and that of all the predictor variables, the "*grouped case type variable*" was the most useful in defining subgroups with significantly different likelihood of neither a partial nor complete settlement was "Case Type". In fact, Use of the Case Type predictor facilitated the identification of the four sub-groups of 86, 471, 1379 and 469 mediations shown in Figure 5.8 – with average likelihoods of neither a partial nor complete settlement ranging from 57% for the group of medical malpractice and trust and fiduciary duties mediations, to the considerably lower 35% for the group of wrongful dismissal and collections mediations.

Case type is therefore a significant variable to consider in identifying cases least or most likely to benefit from mediation – but only for cases in which the mediator has had extensive experience (i.e. the 2405 mediations conducted by mediators with 6 or more Rule 24.1mediations).

For two of these subgroups further information on the other predictor variables was of no use in identifying groups of cases that were more or less likely to result in neither a partial nor a complete settlement:

- *Medical Malpractice and Trust and Fiduciary Duties* Mediations --in which the mediator had conducted 6 or more mandatory mediations (3% of all mediations, average likelihood = 57%), and
- *Real Property, Remaining Case Types, Simplified Rules, Other, Negligence, Motor Vehicle Mediations* –again in which the mediator had conducted 6 or more mandatory mediations (fully 45% of all mediations, average likelihood= 45%).

Whether or Not the Mediator is a Roster or Non-roster Mediator (and City) Is Only Significant for Contract/Commercial Mediations Conducted by Mediators with Six or More Mandatory Mediations

However, knowledge of information on the other predictor variables was useful in further segmenting the other two *case type* subgroups identified for mediations conducted by mediators with 6 or more Rule 24.1 mediations.

First, analysis of the group of 471 *contract commercial mediations* (that had been conducted by mediators with 6 or more mandatory mediations) determined that the variable, "*whether the mediator was a roster or non-roster mediator*" was the most effective in further subdividing the group into two smaller subgroups with differing likelihoods of neither a partial nor complete settlement. The 11 mediations with non roster mediators were far more likely to result in neither a partial or complete settlement than were the 460 mediations with roster mediators (100% vs 45%).[61]

[61] This analysis does not tell us why none of the 11 contract/commercial cases using non-roster mediators achieved neither a full nor a partial settlement. For example, it may be that these 11 cases were more difficult, not that the particular mediator(s) were less effective.

Whether The Mediation Was Conducted in Toronto or Ottawa Has an Impact for this Group Of Mediations with Roster Mediators.

It was possible to subdivide the group of 460 mediations with *roster mediators* even further. The best predictor for doing so was *the city in which the mediation was held.*

The 217 contract/commercial mediations held in Ottawa (that had been conducted by roster Mediators with 6 or more mandatory mediations) had a significantly higher likelihood (52%) of achieving neither a partial or complete settlement than did analogous mediations in Toronto (only 38%).

However, further analysis indicated that information on any other predictor variables could not produce smaller subgroups of mediations with significantly different likelihoods of neither a partial nor complete settlement.

The Location of the Mediation (and Number of Mediations by Mediator) Is Significant for Wrongful Dismissal and Collections Mediations Conducted by Mediators with Six or More Mandatory Mediations

"*City in which the Mediation was Held*" was also the most effective in further subdividing the subgroup of 469 Wrongful Dismissal and Collections mediations (that had been conducted by Mediators with 6 or more mandatory mediations). The 191 Ottawa mediations were significantly more likely to result in neither a partial or complete settlement than were the 278 Toronto mediations (41% vs. 30%).

Number of Mandatory Mediations Conducted by the Mediator has a Further Role in Predicting the Likelihood of Neither a Partial Nor a Complete Settlement for this Group of Toronto Mediations

Finally, it was possible to subdivide the group of 278 Toronto mediations even further. The best predictor for doing so was (again) the Number of Mandatory Mediations Conducted by the Mediator. The 176 Toronto Wrongful Dismissal and Collections mediations conducted by mediators who had conducted 6 to 50 mandatory mediations had a significantly higher likelihood (37%) of achieving neither a partial nor complete settlement than did analogous mediations conducted by mediators who had conducted over 50 Rule 24.1 mediations (only 19%).[62]

Further analysis indicated that information on any other predictor variables could not produce smaller subgroups of mediations with significantly different likelihoods of neither a partial nor a complete settlement.

5.2.4.6 Summary: Groups of Cases Most and Least Likely to Result in At Least a Partial Settlement

A number of important policy and operational implications can be derived from this analysis:

1. It is possible to identify different subgroups of cases that exhibit considerable and statistically significant differences in the average likelihood of mediations achieving

[62] ...this does not refer to over 50 WD and Collections mediations, but to over 50 mediations in all case types

neither a partial nor a complete settlement. Figure 5.9 orders the subgroups identified in Figure 5.8 in order of likelihood of achieving neither a partial nor complete settlement.

2. However, the identification of these subgroups is not a simple matter, and often requires the combination of a number of predictor variables, with different combinations appropriate for different groups of cases.

3. By examining which sub groups have relatively high likelihoods of neither a partial nor a complete settlement at mediation, it is possible to identify where the focus might be on developing policy and operational improvements to Rule 24.1.

4. Subgroups of cases having a relatively high likelihood of neither a partial nor complete settlement (i.e. more than 5 percentage points above the overall average) comprise a substantial proportion of all mediations (32%).

5. Given the range of predictor variables that have been found to be useful in defining the different subgroups, it is clear that efforts to improve the Rule could focus on a number of areas, in particular, the type of case, the Rule 24.1 mediation experience of mediators, the use of roster and non-roster mediators, and the city in which the mediation takes place.

6. Different sets of predictor variables are relevant for identifying different specific groups of cases with significantly different rates of neither a partial nor complete settlement – one common set of case characteristics does not define all such groups of cases[63].

7. The primary role of the Rule 24.1 mediation experience of the mediator has particular implications for qualification, training, compensation and selection and assignment of mediators.

8. After the impacts of other variables were taken into account, the variable, "whether the mediator was selected or assigned", played no additional role in dividing the mediations into groups with significantly different average likelihoods of neither a partial nor complete settlement.[64]

9. Finally, the year of the mediation was also not significant in dividing up the mediations into groups with significantly different average likelihoods of neither a partial nor complete settlement. This finding adds further support to the earlier results that indicate that the courts, bar and court administration have been successful in implementing the program in an expeditious manner.

[63] It is the use of the CHAID technique that allows this type of conclusion to be made. Other statistical techniques such as multiple regression force all cases to be analyzed and described in a common manner using the same set of predictor variables.
[64] However, this variable would be expected to be highly correlated with other variables that were significant (e.g. Rule 24.1 experience of mediators and whether the mediator was a roster or non-roster mediator).

Figure 5.9 Mediations:
Groups with Significantly Different Likelihoods of Achieving Neither a Partial Nor a Complete Settlement at or within 7 Days of Mediation

Group #	Likelihood	Percent of Mediations in Group	Predictor Variables			
			Rule 24.1 mediation experience of Mediator	Case Type	Roster or Non-roster mediator	City of mediation
[redacted]						
1	100%	.4%	6-25, 26-50, over 50	Contract Commercial	Non-roster	
2	57%	3%	6-25, 26-50, over 50	Medical Malpractice, Trust & Fiduciary		
3	52%	7%	6-25, 26-50, over 50	Contract Commercial	Roster	Ottawa
4	49%	22%	1-5, missing			
[redacted]		32%				
[redacted]						
5	41%	6%	6-25, 26-50, over 50	Wrongful Dismissal, Collections		Ottawa
6	38%	45%	6-25, 26-50, over 50	Real Property, Remaining, Simplified Rules, Other, Negligence, Motor Vehicle		
7	38%	8%	6-25, 26-50, over 50	Contract Commercial	Roster	Toronto
[redacted]						
[redacted]						
8	37%	6%	6-25, 26-50	Wrongful Dismissal, Collections		Toronto
9	19%	3%	over 50	Wrongful Dismissal, Collections		Toronto
[redacted]						

5.3 Outcomes Other Than Complete Settlement: Resolution of Specific Issues (for cases not completely settled)

5.3.1 At Least Partially Settled Outcomes

Whether or not a case is completely settled at mediation is clearly only one measure of whether the mediation can be termed as positively contributing to the dispute resolution process. For instance, the mediation literature often pays particular attention to a combination of the completely settled plus partially settled statistics. This is the converse of the "neither partially nor completely settled" outcome that was the focus of the previous section.

For comparison purposes, estimates are therefore provided in Figure 5.10 of the percents of mediations with an"at least partially settled" (i.e either "completely settled" or "partially settled" outcome – with the percents of mediations with only partial settlements shown in brackets.

Figure 5.10
Mediations: Rates -- At least Partially Settled (partly settled)

	Ottawa			Toronto	
	Partially or Completely	(Partially)		Partially or Completely	(Partially)
Real Property	68%	(18%)		55%	(25%)
Negligence	64%	(10%)		55%	(16%)
Wrongful Dismissal	61%	(8%)		63%	(16%)
Simplified Rules	61%	(10%)			
Motor Vehicle	58%	(13%)		59%	(20%)
Collection	53%	(19%)		67%	(25%)
Other	52%	(11%)		63%	(23%)
Remaining Case Types	48%	(22%)		55%	(30%)
Trust & Fiduciary	47%	(26%)		51%	(14%)
Contract Commercial	47%	(11%)		56%	(24%)
Medical Malpractice	47%	(7%)		38%	(22%)
Total	56%	(12%)		59%	(21%)

Overall, 56% of Ottawa mediations and 59% of Toronto mediations led to "at least partly settled" mediation outcomes.

In Ottawa, between 60% and 70% of mediations had "at least partially settled" outcomes for real property, negligence, wrongful dismissal, and Simplified Rules cases. Only four case types had "at least partially settled" outcomes less than 50% (trust & fiduciary trust, "remaining", contract commercial and medical malpractice) – but those percents were between 48% and 47%.

In Toronto, between 60% and 70% of mediations had "at least partially settled" outcomes for collections, wrongful dismissal, and "other" case types. However, with the exception of medical malpractice cases (38%), all of the remaining case types had between 50% and 60% of their mediations ending in a "at least partially settled outcome".

5.3.2 Partly Settled Outcomes

Figure 5.10 also shows 12 percent of the Ottawa mediations ended in "partial" (but not complete) settlements. Partial settlements were, however, considerably more frequent in Toronto and were the result in a minority but significant proportion (21%) of mediations – with 2 or more of every 10 mediations ending in a partial settlement for 7 of the 10 case types shown.

In point of fact, there is often considerable skepticism expressed about the use of the term "partially settled". Unless the outcome is precisely defined and measured, statistics which include partial settlements often lack credibility. The next sections will therefore consider in some detail what was meant in this study by "partial settlement".

5.3.3 Whether Partial Settlement is Related to Issues on the Statement of Issues or To Other Issues

Figure A5.1 in Appendix A begins by breaking down the partially settled results into categories that differentiate whether the partial settlement was in respect to issues included in the Statement of Issues or with respect to issues *not* included on the Statement of Issues. Those interested in whether the parties are including all the relevant issues on the Statements of Issues will find the results in Figure A5.1 particularly relevant. For example, partial settlement of issues not included in the Statement of Issues is much more common in Toronto than in Ottawa. Only 26 (4%) of the 626 Ottawa cases that were not completely settled at mediation reported settlement of not-included issues (in 12 cases, those issues were settled along with issues that were included in the Statement of Issues). In contrast, 237 (20%) of the 1210 Toronto mediations that did not result in complete settlements reported settling not-included issues, and in 136 (11%) of those cases, mediators reported that not-included issues were settled even though no issues included in the Statement of Issues were settled.

Stated another way, by far the majority (81%) of the 134 Ottawa cases that were partially settled reported settling only issues included in the Statement of Issues. In Toronto, of the 410 partially settled cases, 33% settled only issues *not* included in the Statement of Issues, 25% reported settling a combination of issues in and not in the Statement of Issues, and the remaining 42% reported settling only issues on the statement of issues.

These findings are consistent with the hypothesis that parties and counsel in Ottawa are more likely than their Toronto counterparts to include a more complete list of the relevant issues on the Statement of Issues. Alternatively, the mediations in Toronto may be more likely to expand the scope of discussions beyond the issues listed in the Statement of Issues. If the first hypothesis best explains the findings, then enhanced training of the bar in Toronto may be indicated. If the explanation lies in the second hypothesis, the training implications would apply to both mediators and the bar. Unfortunately, determining which of the hypotheses (or both) proves most relevant would require further research.

Figure A5.1 provides this more detailed information on the type of results obtained at mediations for each of the different case types.

5.3.4 Progress on Which Specific Substantive Issues

The evaluation attempted to further define "partially settled" by (in a sample of mediations in which a complete settlement was <u>not</u> reached) asking lawyers, litigants and mediators if any

progress had been made on the resolution of different specific types of substantive issues.[65] The responses of each group are compared in Figure 5.11.[66]

In mediated cases that were not completely settled at mediation:

Lawyers and Litigants

1. There were strong similarities in the responses of lawyers and litigants regarding the progress made on each type of issue.
2. There were also strong similarities in the responses (of either lawyers or litigants) in Ottawa and Toronto.
3. In both Ottawa and Toronto, for every substantive issue considered, less than a majority of **lawyers** and **litigants** indicated that the mediation had made progress (where "progress" includes either agreeing on a process to move ahead, moving toward settlement/ agreement, reaching agreement or settlement in principle, and/or reaching formal settlement or agreement).
4. However, at the same time, for certain types of issues in a substantial (but still minority) proportion of mediations, both **lawyers and litigants** indicated that "progress" had been made. These proportions varied by type of issue, but were between 25% and 41% for: types of damages that were recoverable, amount of damages, assignment of liability and "determination or clarification or resolution of the important facts".

Figure 5.11 Responses in Mediated Cases in which a Complete Settlement was Not Reached: Percent of Litigants, Lawyers and Mediators responding that some progress* was made during the mediation toward the narrowing or partial settlement of specific types of issues

	Litigants		Lawyer		Mediator	
	Ottawa	Toronto	Ottawa	Toronto	Ottawa	Toronto
Issues						
a) Types of damages that are recoverable	31%	30%	38%	29%	52%	55%
b) Amount of damages	32%	26%	41%	27%	60%	52%
c) Assignment of liability	17%	21%	25%	24%	34%	40%
d) The parties to be added to or removed from the action	16%	19%	11%	18%	9%	19%
e) Claims to be added to or removed from the action	17%	16%	9%	15%	9%	18%
f) Interpretation or clarification of the terms of an existing offer of settlement	24%	14%	12%	5%	15%	16%
g) Ratification of an offer by person(s) in authority	12%	6%	7%	4%	17%	9%
Determination, clarification or resolution of						
h) a point of law	17%	18%	14%	13%	18%	30%
i) a procedural issue	15%	19%	17%	15%	18%	33%
j) the important facts	34%	32%	40%	33%	41%	55%

* *"Progress" includes responses that "Agreement was reached on process to move ahead", "Progress made toward settlement/agreement", "Agreement or settlement reached in principle", or "Formal settlement or agreement reached".*

[65] As in the previous section, in this and the following sections responses were analyzed to identify variations with respect to a number of characteristics of the mediations and the respondents.

[66] It should be noted that – although one mediator response was collected for each mediation in the sample of mediations – it was possible to obtain responses from more than one lawyer or litigant in each mediation sampled.

In summary, these results add support to the argument that even in cases that do not completely settle, mediations do contribute positive results to the dispute resolution process. Statistics purporting to measure the "outcome of mediations" should go beyond simply reporting the percent of cases resulting in a complete settlement. In particular, the results just presented argue strongly for the inclusion of indicators measuring "partial settlement" -- although what constitutes a partial settlement should be carefully defined.

Mediators

- The first observation is that for certain types of issues, mediators' responses regarding the progress made were similar overall[67] to those of lawyers and litigants.
- However, for other types of issues, mediators were considerably more positive than both litigants and lawyers regarding the progress made. This difference in assessment of progress was especially obvious regarding "types of damages that are recoverable", "amount of damages", "assignment of liability", and "determination or clarification or resolution of the important facts".
- Also, the responses of mediators in Toronto mediations were similar to but slightly more positive than those of mediators in Ottawa mediations.

These differences in perceptions may be useful in explaining why mediators sometimes appear more positive than lawyers in estimating the impacts of mediation in achieving "partial settlements". The results also warn against using measures of certain types of partial settlement based only on the responses of one group.

5.4 Other Benefits of Mediation Beyond Partial or Complete Settlement of Issues

The literature on court-connected mediation also identifies a number of additional benefits that could be expected from mediation – benefits that extend beyond the resolution of all or some specific issues.

The next chapter discusses additional benefits that relate to the mediation or litigation *process*. However, we also asked mediators whether the mediation had achieved each of the 12 additional benefits (related directly to the outcome of the litigation) that are shown in Figure 5.12. The results shown related to all mediations – whether or not there was a complete settlement at the mediation.

Clearly mediators believed that the mediations were quite often successful in achieving all of the benefits shown in Figure 5.12.

In particular, in both Ottawa and Toronto, roughly two thirds or more of the mediations were believed by mediators to:

- Provide one or more parties with new information they considered relevant;
- Identify matters important to one or more of the parties;
- Set priorities among issues;
- Facilitate discussion of new settlement offers;

[67] The results shown are totaled for all mediations that were not completely settled. The evaluation did not match mediator's and lawyer's responses in the same case.

- Achieve a better awareness of the potential monetary savings from settling earlier in the litigation process;
- Result in at least one of the parties gaining a better understanding of his or her own case;
- Result in at least one of the parties gained a better understanding of his or her opponent's case.

For all of the areas listed no more than 2% of the mediator's responses indicate that the mediation had a negative impact.

Litigants and lawyers were also asked to agree or disagree with the statement, *"The mandatory mediation provided one or more parties with new relevant information."*

- Most litigants in both Ottawa and Toronto agreed:
  - 60% of Ottawa litigants' responses agreed with the statement; 15% disagreed; and 25% did not know; and
  - 58% of Toronto litigants agreed with the statement; 22% disagreed; and 21% did not know.
- Slightly higher percents of lawyers' responses in both Ottawa and Toronto were also in agreement:
  - 72% of Ottawa lawyers' responses agreed with the statement; 14% disagreed; and 14% did not know; and
  - 64% of Toronto lawyers' responses agreed with the statement; 21% disagreed; and 15% did not know.
- Although relatively high percents of responses from both lawyers and litigants indicated agreement with the statement, the percents were (especially for litigants) lower than for mediators.

The evaluation also questioned litigants with respect to the issue of whether the mediation resulted in "at least one of the parties' gaining a better understanding of his or her opponents' case".

- Roughly 60% of both Ottawa and Toronto litigants' responses agreed that this benefit occurred in their case.
- However, again, the responses from litigants were on average not as positive as those from mediators (roughly 80% positive).
- As well, in just under 2 of every 10 responses litigants indicated that the mediation had a *negative* impact on "parties' gaining a better understanding of his or her opponents' case".

Finally, a benefit frequently hypothesized as being associated with mediation is that it is more likely than the traditional litigation process to improve the relationship between the parties. A related question was asked only of litigants -- "Did the mediation improve the business or personal relationship between the parties?"
Here the results are less positive.

- 30% of Ottawa and 24% of Toronto responses indicated that the mediation was successful in achieving this outcome.
- A higher percent of responses in Ottawa (37%) and Toronto (36%) indicated that the mediation had a negative impact in this area.

Figure 5.12 Responses in mediated cases: percent of litigants, lawyers and mediators responding that the mediation had a negative or positive impact in specific areas (not related to the settlement of specific issues)

	Litigants		Lawyers		Mediators	
	Ottawa	Toronto	Ottawa	Toronto	Ottawa	Toronto
a) Provided one or more parties with new information they considered relevant	-15% +60%	-20% +58%	-14% +72%	-21% +64%	-2% +79%	-2% +81%
c) Improved the business or personal relationship between the parties	-37% +30%	-36% +24%				
c) developed agreements among the parties to exchange additional information in the future					-1% +39%	-1% +45%
d) Identified matters important to one or more of the parties					-1% +85%	-1% +85%
e) Set priorities among issues					-1% +67%	-0% +65%
f) Developed a process for dealing with the remaining issues					-1% +53%	-1% +53%
g) Facilitated discussion of existing settlement offers					-1% +49%	-1% +43%
h) Facilitated Discussion of new settlement offers					-1% +77%	-2% +65%
i) Improved the credibility of one or more of the parties with the other parties					-8% +47%	-9% +41%
j) Achieved a better awareness of the potential monetary savings from settling earlier in the litigation process					-0% +71%	-0% +66%
k) achieved a better awareness of the potential non-monetary savings from settling earlier in the litigation process					-1% +64%	-1% +57%
l) at least one of the parties gained a better understanding of his or her own case					-1% +77%	-0% +75%
m) at least one of the parties gained a better understanding of his or her opponent's case	-18% +62%	-17% +58%			-2% +80%	-0% +79%

"-" Indicates either "Major negative impact" or "Negative impact"
"+" indicates either "Positive impact" or "Major positive impact"
(the remainder of the responses were either "Do not know or n/a" or "No impact").

In summary, although there are some areas in which expectations were not realized, these results also support the contention that attempts to measure the benefits of mediations should go beyond measurement simply of whether a complete settlement is achieved.

The focus groups and interviews conducted during the evaluation also supported many of these results. In addition, Figure 5.13 contains a number of supplementary points that were raised by specific individuals. (Please note that, in many instances, these points were raised by individuals and therefore should not be treated the same as results emanating from a larger representative random sample of responses to specific questions. Some would require further exploration to verify the point made.)

Figure 5.13: Additional Specific Points raised in Focus Groups or Interviews

- In Ottawa, mandatory mediation has resulted in a more current court docket (and backlogs have been reduced).
- Mandatory mediation makes it easier to get fixed dates for scheduling matters which do proceed to court.
- Mandatory mediation done before discovery can shorten, simplify or eliminate the need for discovery.
- Mandatory mediation speeds up lawyers' cash flow because matters move through the process faster.
- Mandatory mediation is becoming accepted as it is more predictable than the courts.
- Once lawyers understand mediation (purpose and process) better, there will be better results.
- Mandatory mediation provides incentives for lawyers to take certain cases they would not have taken before – e.g. disability cases that can drag on for years (since there is a good chance they will settle at mediation).
- Parties can learn earlier what the other party's experts will report.
- Undertakings are done earlier since lawyers become more familiar with their cases during the early stages of the process.
- Since Rule 24, there are more civil cases being filed and defended in Ottawa.
- Mandatory mediation forces lawyers to figure out earlier how strong their client's case is – if it is weak, clients can save money by pulling out or settling early.

5.5 Satisfaction of the Parties with Mediation Outcomes

This evaluation of the outcomes of mediations under the Rule is completed with the results of two separate efforts to gauge the overall satisfaction levels of lawyers and litigants. The first effort consisted of asking a number of specific "overall satisfaction" questions to lawyers and litigants in a sample of completed mediations. The second effort consisted of posing such questions during a series of interviews and focus groups.

In general, lawyers tended to agree more often than they disagreed with positive summary statements about the process, and with most questions, a majority of both groups of lawyers (Ottawa and Toronto) agreed with positive summary statements. Ottawa lawyers were consistently more positive, however.

For the most part, litigants in cases filed in Ottawa voiced about the same degree of satisfaction with the mediation as did Ottawa lawyers – which is to say, generally very high. In Toronto, litigants were somewhat more satisfied with the mediation than were the lawyers (with the exception of perceptions of "justice being served", where only 39% of litigants agreed, as compared to 46% of lawyers).

5.5.1 Satisfaction with the Overall Mandatory Mediation Experience

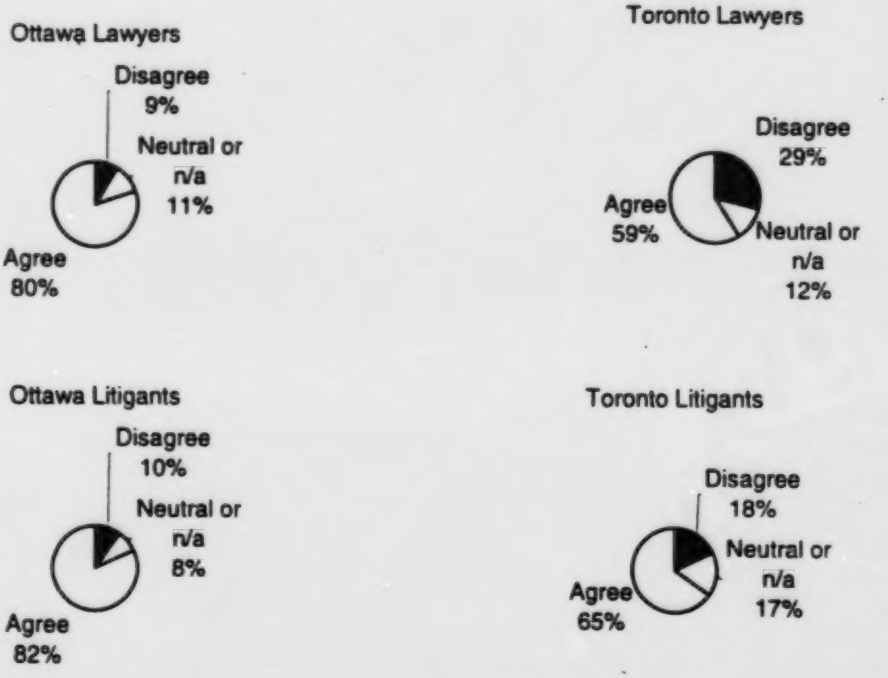
All lawyers and litigants who participated in a sample of Rule 24.1 mandatory mediations were asked whether they "didn't know", "strongly disagreed", "somewhat disagreed", "neither agreed nor disagreed" "somewhat agreed" or "strongly agreed" with a number of overall statements of satisfaction with Rule 24.1 Mandatory mediation.

When lawyers were asked "*Were you satisfied with the overall mandatory mediation experience*?"

- 80% of Ottawa lawyers agreed (51% strongly) that they were "satisfied with the overall mandatory mediation experience";
    - A majority of Ottawa lawyers agreed with the statement, whether or not the case was completely, partially, or not at all settled at mediation; but where 86% of Ottawa lawyers for the plaintiff were satisfied with the overall experience, only 73% of Ottawa lawyers for the defence were satisfied.

- A lower percent (59%) – but still a majority of Toronto lawyers agreed (34% strongly) that they were "satisfied with the overall mandatory mediation experience";
    - Where the case completed settled at mediation, 85% agreed that they were satisfied, but only 39% were satisfied after partial settlements (although 43% were satisfied where there was not even a partial settlement).

Figure 5.14: Responses to the statement, "I was satisfied with the overall mandatory mediation experience"



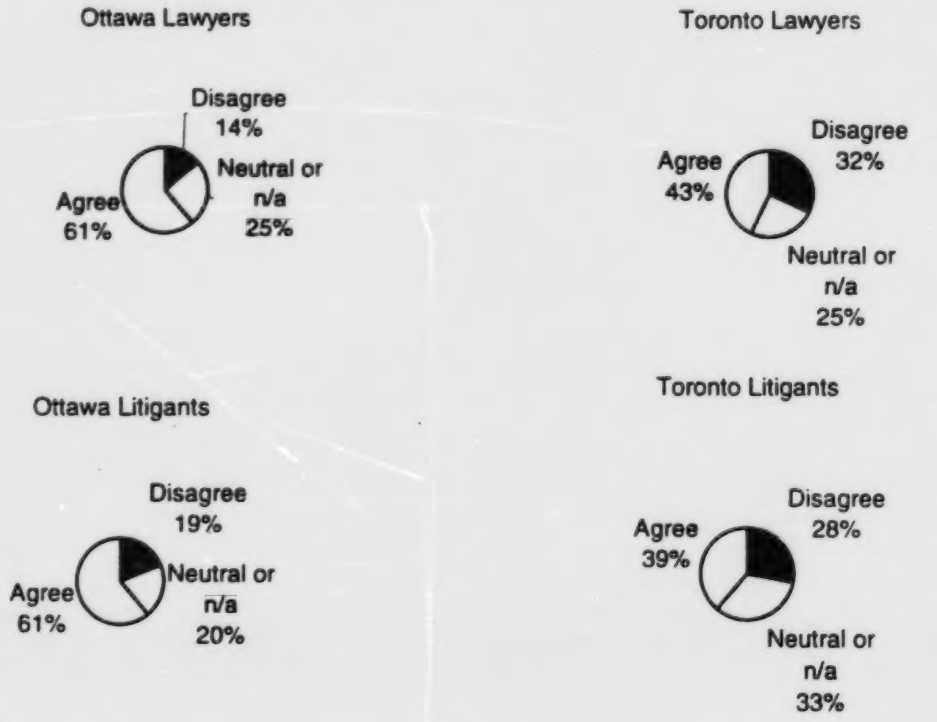
When litigants were asked whether they were "*satisfied with the overall mandatory mediation experience*"

- 82% of Ottawa litigants agreed – a similar percent as for Ottawa lawyers, and
- 65% of Toronto litigants agreed – lower percent than for Ottawa litigants, but a higher percent than for Toronto lawyers.

5.5.2 Was Justice Served?

The results were still positive, but less so when lawyers were asked "*was justice was served by this ... process*?". A majority (61%) of Ottawa lawyers agreed with the statement, with 14% disagreeing. The results were less positive in Toronto. Less than half (46%) of Toronto lawyers agreed with the statement[68] and a full 32% disagreed. This high percent of Toronto lawyers disagreeing with the statement that justice was served cannot help but be a source of some concern.

Figure 5.15: Responses to the statement, "justice was served by this ... process"



[68] Toronto lawyers working with a mediator who had been selected by the parties were only moderately more likely to feel justice was served (50%).

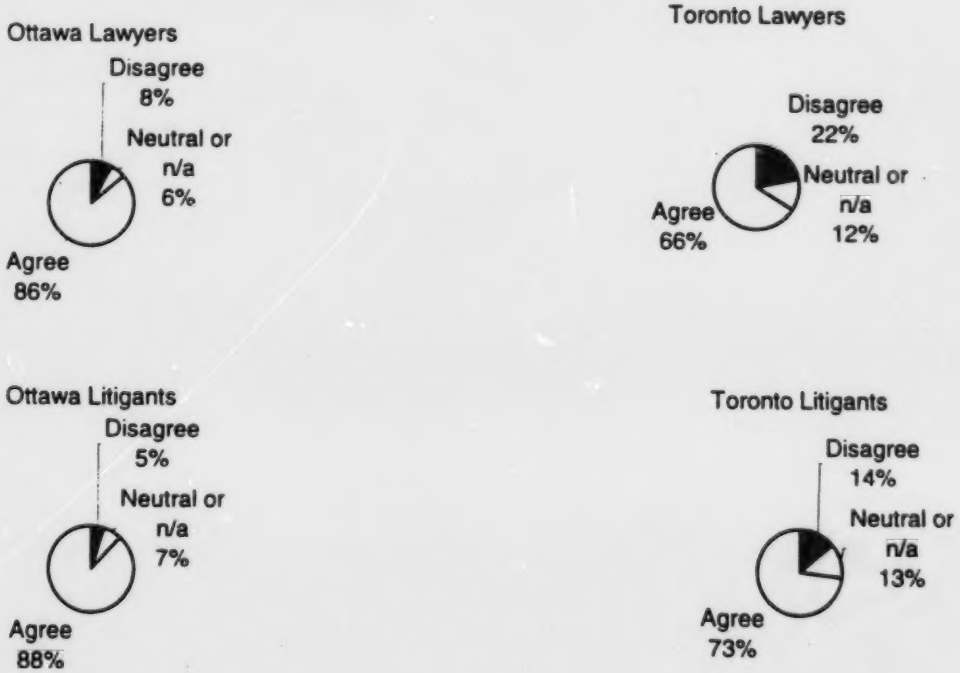
Similar results were obtained when litigants were asked the same question. It is particularly noteworthy that 28% of responses from Toronto litigants did not agree that justice was served – a percent slightly lower than for Toronto lawyers, but still a significant proportion.

5.5.3 Would Mandatory Mediation be Used Again?

When asked the "bottom-line" question "*assuming you had the choice, would you use mandatory mediation again to resolve similar disputes under similar circumstances*?" more positive results were obtained.

- Fully 88% of Ottawa Lawyers agreed that they would use mandatory mediation in similar situations. A smaller proportion – but still a strong majority (66%) of Toronto lawyers also agreed.
    - Lawyers in cases in which the mediator had been selected by the parties were more likely to say they would use mandatory mediation again if they had a choice.
- Only 8% of Ottawa lawyers and 22% of Toronto lawyers said they would not use mandatory mediation again in a similar situation, if they had a choice.
    - Lawyers for the defendant were more likely to say they would not use mandatory mediation again if they had a choice.
- Litigants in both Ottawa and Toronto were even more likely than their lawyer counterparts to agree that they would use mediation again in similar circumstances (88% and 73% respectively).

Figure 5.16: Responses to the statement, "assuming you had the choice, would you use mandatory mediation again to resolve similar disputes under similar circumstances?



5.5.4 Was the Settlement Better for the Client than it Would Have Been Without Mandatory Mediation?

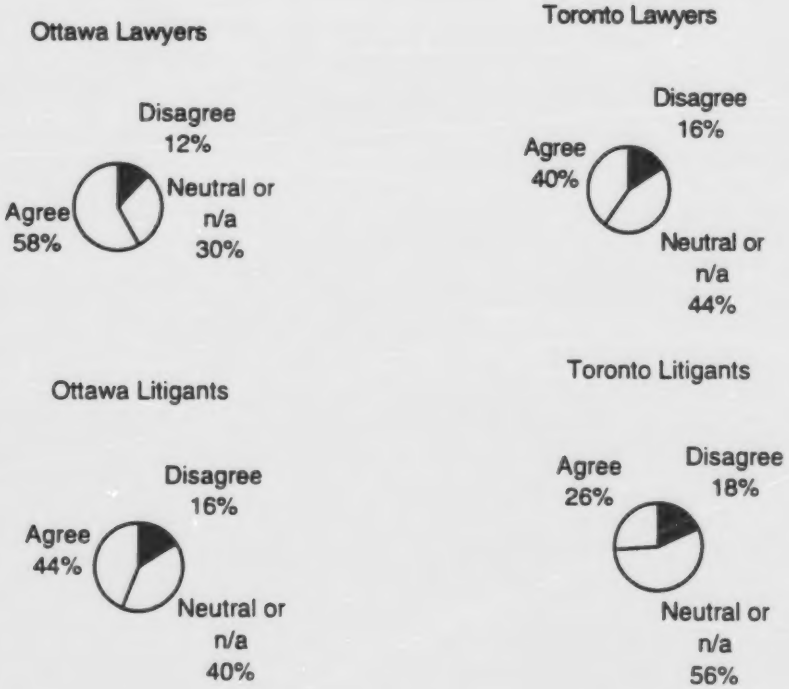
All lawyers and litigants who participated in a sample of Rule 24.1 mandatory mediations that led to a complete settlement were asked two questions that attempted to assess the impact of mandatory mediation on the quality of that specific settlement.

First, lawyers and litigants were asked to respond to the statement, "*The settlement was better for the client than it would have been without mandatory mediation*?"

Ottawa lawyers gave the most positive responses, with over half (58%) agreeing with the statement, and only 12% disagreeing. In Toronto, responses were less positive, but even there fully 40% indicated that the settlement was better, and a further 44% indicated that the impact on the settlement was either neutral or unknown.

Responses from Ottawa litigants were also quite positive, but less positive than those from Ottawa lawyers – with 44% agreeing that the settlement was better, and only 16% disagreeing. The results from Toronto litigants were the least positive -- but still more agreed (26%) than disagreed (18%) that the settlement was better under mandatory mediation. (For Toronto litigants, the majority of responses indicated a neutral or unknown impact.)

Figure 5.17: Responses to the statement, "The settlement was better for the client than it would have been without mandatory mediation"



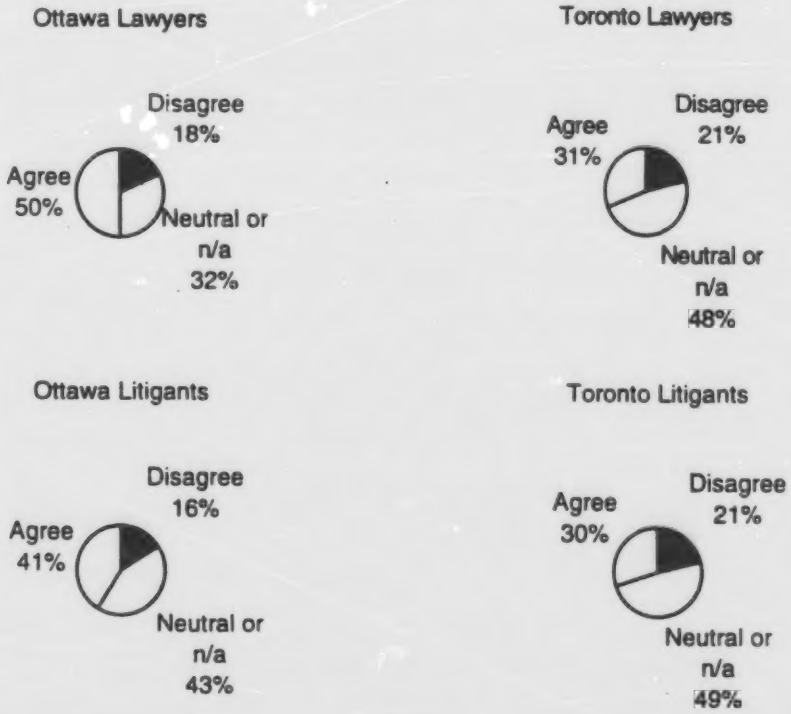
5.5.5 Was the Settlement Fairer?

The assessment of responses related to overall satisfaction is concluded with the second question asked of lawyers and litigants in the sample of mediations that completely settled – "*Was the settlement fairer than without mandatory mediation*?".

Here again the results reflect the differences between Ottawa and Toronto.

- Half of the responses from Ottawa lawyers indicated that the result under mandatory mediation was fairer. A sizeable proportion (40%) of responses from Ottawa litigants indicated a similar result. For both Ottawa lawyers and Ottawa litigants, a much smaller percent of responses disagreed that the resulting settlement was fairer (18% and 16%). From a third perspective, 82% of Ottawa lawyers and 84% of Ottawa litigants felt that the settlement under mediation was either fairer or similar to that under litigation process not involving mediation.
- For Toronto lawyers – although the proportion of responses agreeing that the settlement was fairer (31%) was greater than the proportion disagreeing (23%) – the proportion disagreeing that the settlement was fairer is sufficiently large as to cause some concern. However, this concern should still be tempered with the fact that 79% of Toronto lawyer responses indicated that the resulting settlement under mediation was either fairer, neutral or unknown.
- The results for Toronto litigants were almost identical to those for Toronto lawyers.

Figure 5.18: Responses to the statement, "Was the settlement fairer than without mandatory mediation?"



Chapter 6: The Mediation Process and Procedures

6.1 Introduction

This chapter describes the findings (primarily from the focus groups, interviews and surveys), with respect to procedural and administrative questions and issues not covered in the preceding chapters – that is, questions other than those related to timing, costs and outcomes.

Section 6.2: *Measures of Participant Satisfaction with the Process*
summarizes lawyers' and litigants' perceptions of the skill of the mediator and his/her understanding of the facts and the legal issues in the case.

Section 6.3: Providing the Parties with Information
summarizes lawyers', litigants', and in some cases mediators' perceptions of the adequacy of the information on the mediation process itself and on the costs and benefits of proceeding further in the court process, the value of the mediation in bringing new information or parties to the table, and whether or not there were one or more parties at the table who did not have the authority to settle.

Section 6.4: Procedures for Selection, Training and Monitoring of Mediators
summarizes the comments and recommendations made by interviewees and participants in the focus groups about selection, training and monitoring of mediators.

Section 6.5: Concentration of Mediator Activity
analyses the number of mediations done by the busiest mediators, and finds a higher concentration of mediations in Ottawa.

Section 6.6: Contribution of Busiest Mediators to the Overall Program Performance
analyzes the impact of mediators who conducted relatively large numbers of mediations under the Rule.

Section 6.7: Administrative Monitoring of Active Pending Mediations
considers how to monitor pending cases, and applies this method to measure the growth of active pending mediations.

Section 6.8: Other Observations Related to Rules, Procedures and Administration
summarizes the comments and recommendations made by interviewees and participants in the focus groups about the introduction of the program, the

information made available about it, the role of the Local Mediation Committees. Local Mediation Coordinators and Case Management Masters, and other aspects of rules, procedures and administration of the program.

6.2 Measures of Participant Satisfaction with the Process

Several questions were posed to lawyers and litigants in order to elicit their overall perceptions of the mediation process and the mediator. These responses, displayed in Figure 6.1, show that overall, lawyers tended to agree more often than disagreed with positive summary statements about the process, and with most questions, a majority of both groups of lawyers (Ottawa and Toronto) agreed with positive summary statements. Ottawa lawyers were consistently more positive, however.

- Generally, defence lawyers were slightly less inclined to agree with positive statements about the mediation process than were lawyers for the plaintiff;
- On measures of satisfaction with the mediator him/herself, a substantial majority of Ottawa lawyers were satisfied with such things as the mediator's understanding of the legal and factual issues, skills in moving the parties towards a settlement, and choices about meeting with individual parties before or during the mediation;
- On these same measures, a majority of Toronto lawyers were also satisfied, with the exception that only 42% agreed that "the mediator was able to address any imbalance of power between the parties" (although only 11% disagreed).

Figure 6.1. Satisfaction Measures: Lawyers' Responses to Summary Questions about Mediation Process and Mediator

Question	Ottawa Responses		Toronto Responses	
	% Agree	% Disagree	% Agree	% Disagree
The mediator showed an understanding of the legal issues that were important in this case	90	4	72	14
The mediator understood the factual matters relevant to this case	91	4	84	8
I was satisfied with the mediator's skill in moving all parties towards an agreement	83	8	67	15
The mediator was able to address any imbalance of power between the parties	55	5	42	11
The mediator should have met more frequently with individual parties either before or during the mandatory mediation	6	69	9	58

During the focus groups and interviews, a number of counsel in both Ottawa and Toronto reported that their clients seemed to like the mediation process. Ottawa lawyers suggested that litigants appreciate the opportunity to get more involved in the process earlier. Toronto lawyers suggested that from the client's point of view, the earlier the mediation occurs, the better.

Litigants were asked similar questions, displayed in Figure 6.2. For the most part, litigants in cases filed in Ottawa voiced about the same degree of satisfaction with the mediation as did Ottawa lawyers – which is to say, generally very high. In Toronto, litigants were somewhat more satisfied with the mediation than were the lawyers (with the exception of perceptions of "justice being served", where only 39% of litigants agreed, as compared to 46% of lawyers). However, the Toronto litigants gave very similar satisfaction ratings of the mediator, with the exception that the litigants tended to agree less than did the lawyers that the mediator understood the relevant facts in the case.

- Litigants were more satisfied with the mediation and the mediator on most measures of satisfaction in cases where the mediator was selected by the parties;
- Litigants in Ottawa were more likely to agree (81%) that the informal nature of the process assisted negotiations than were litigants in Toronto (67%).

Figure 6.2. Satisfaction Measures: Litigants' Responses to Summary Questions about Mediation Process and Mediator

Question	Ottawa Responses		Toronto Response	
	% Agree	% Disagree	% Agree	% Disagree
The mediator showed an understanding of the legal issues that were important in this case	84	5	74	11
The mediator understood the factual matters relevant to this case	85	8	77	10
I was satisfied with the mediator's skill in moving all parties towards an agreement	82	9	69	15
The mediator was able to address any imbalance of power between the parties	55	10	39	14
The mediator played too significant a role in determining the outcome	7	70	7	62

6.3 Providing the Parties with Information

One of the issues which has emerged from focus groups and interviews is that the parties – and, at the beginning, sometimes the lawyers in the cases – do not really understand the mediation process before they enter into it. Accordingly, litigants were asked to agree or disagree with the statement,

"The information I received about the mandatory mediation process was adequate."

Three out of four Ottawa litigants, and three out of five Toronto litigants, agreed that the information had been adequate.

- 77% of Ottawa litigants agreed with the statement; 13% disagreed; and 10% did not know;
- 62% of Toronto litigants agreed with the statement; 15% disagreed; and 24% did not know.

Mediators were asked,

> *"What would have been the impact on settlement or narrowing of the issues ... if more information on the mandatory mediation process had been available to one or more of the parties?"*

The most common response was that there would likely have been no impact, but in 6% of Ottawa cases and 12% of Toronto cases, mediators felt there would have been an improvement.

- 56% of Ottawa mediators felt that there would likely have been no impact; 17% said it was not relevant in the case, and 6% said there would have been an improvement;
- 56% of Toronto mediators felt that there would likely have been no impact; 24% said it was not relevant in the case, and 12% said there would have been an improvement.

Lawyers, litigants and mediators were asked about the value of giving the parties more information about the costs and benefits of proceeding to court. Lawyers were asked to agree or disagree with the statement,

> *"More information about the monetary and non-monetary costs and benefits of proceeding further in the court process should have been available to either or both of the parties."*

Most lawyers from both pilot sites did not see the value of further such information in the particular case.

- 65% of Ottawa lawyers disagreed (49% disagreed strongly); 11% agreed;
- 54% of Toronto lawyers disagreed (42% disagreed strongly); 13% agreed.

Litigants, however, were split in their views of this question.

- 45% of Ottawa litigants disagreed with the statement; 30% agreed with it; and 25% did not know;
- 38% of Toronto litigants disagreed with the statement; 26% agreed with it; and 37% did not know.

Mediators were asked,

> *"What would have been the impact on settlement or narrowing of the issues ... if more time had been spent during the mediation explicitly discussing the monetary and non-monetary costs and benefits of proceeding further in the court process?"*

A majority of mediators in both cities did not think more of this information would have made a difference.

- 67% of Ottawa mediators felt there would likely have been no impact; 4% felt there would likely have been some improvement, and 2% said the impact would likely have been harmful;

- 61% of Toronto mediators felt there would likely have been no impact; 7% felt there would likely have been some improvement, and 2% said the impact would likely have been harmful.

Litigants were asked to agree or disagree with the statement,

"The mandatory mediation provided one or more parties with new relevant information."

Most litigants in both Ottawa and Toronto agreed.

- 60% of Ottawa litigants agreed with the statement; 15% disagreed; and 25% did not know;
- 57% of Toronto litigants agreed with the statement; 22% disagreed; and 21% did not know.

Mediators were also asked about the potential value of having more information on the table, or having more parties at the table. First, mediators were asked,

"What would have been the impact on settlement or narrowing of the issues ... if additional information necessary to resolve the dispute had been available at the mediation?"

Although only a quarter of the Ottawa mediators felt there would have been an improvement if more information had been on the table, almost half of the Toronto mediators felt this would have benefited the process.

- 49% of Ottawa mediators said there would have been no impact; 25% felt the effect would likely have been some improvement; 17% said the issue was not relevant in this case;
- 48% of Toronto mediators – double the proportion of Ottawa mediators – felt the effect would likely have been some improvement; 30% said there would have been no impact, and 16% said the issue was not relevant in this case. There may be more room for improvement in the amounts of information made available at Toronto mediations.

Next, mediators were asked,

"What would have been the impact on settlement or narrowing of the issues ... if other parties or individuals had been included in or brought into the mediation process to provide required information?"

On this subject, the two groups agreed.

- 35% of Ottawa mediators said this issue was not relevant in the case; 33% said there would likely have been no impact; 16% said there likely would have been some improvement;
- 35% of Toronto mediators said this issue was not relevant in the case; 35% said there would likely have been no impact; 20% said there likely would have been some improvement.

An early problem reported in Ottawa was of mediations in which one or more of the participants at the mediation did not have the authority to settle. Accordingly, lawyers and mediators were asked about this issue. Lawyers were asked to agree or disagree with the statement,

"At least one of the parties did not have authority to reach an agreement."

This occurrence is not as uncommon as one might hope.

- 15% of Ottawa lawyers' responses agreed with the statement; 5% said they did not know;
- 18% of Toronto lawyers' responses agreed with the statement; 8% said they did not know.

Litigants' perceptions of the frequency of this occurrence were similar.

- 16% of Ottawa litigants agreed with the statement; 69% disagreed; and 16% did not know;
- 16% of Toronto litigants agreed with the statement; 56% disagreed; and 27% did not know.

Mediators were asked,

> *"What would have been the impact on settlement or narrowing of the issues ... if one or more additional parties with the authority to settle had been present at the mediation?"*

Responses at the two pilot project sites were similar. The most likely response was that this issue was not relevant in the case. Another one in three responses were that there would not have been an impact, but in one in five responses, the mediator said there would have been an improvement.

- 39% of Ottawa mediators said the issue was not relevant in the case; 29% said there would likely have been no impact, and 19% said there likely would have been an improvement;
- 42% of Toronto mediators said the issue was not relevant in the case; 34% said there would likely have been no impact, and 18% said there likely would have been an improvement.

6.4 Procedures for Selection, Training and Monitoring of Mediators

The focus groups and interviews with evaluation participants included extensive discussion of issues related to the procedures for selection, training and monitoring of mediators. A wide range of opinions was expressed, with some areas of apparent consensus.

Regarding the selection of mediators for acceptance to the roster, many participants felt the criteria for acceptance to the roster were set too low – while others felt that "the market" would take care of poor mediators. A key problem is that there is no professional standard of qualification to be a mediator, which leaves the question of criteria to those responsible for the roster. Among the suggestions made for initial and ongoing acceptance to the roster were: a minimum number (at least five) of previous "solo" mediations; a requirement for a minimum number of annual mediations after initial acceptance to the roster; interviews and mock mediations; and demonstration of continuing skills development (education) in mediation. With this final suggestion, there is the difficulty of verifying the quality of continuing education programs in a non-certified environment.

In terms of the process by which counsel and the parties to litigation select a mediator in individual cases, a number of participants suggested that there should be information available

about each available mediator, including his/her background, expertise, experience, and possibly areas of specialization.

There seemed to be general agreement on the need for programs of support for mediation, including activities such as quarterly professional gatherings, sharing of information and ideas on dilemmas and challenges, mentoring, professional development, and dialogue between mediators.

Although the monitoring of mediators is part of the responsibility of Local Mediation Committees, it was generally acknowledged that to date, their role in this process had been confined to the receiving of complaints about individual mediations. There are no established criteria for monitoring – for example, should monitoring be on the basis of a "code of conduct" approach or a "quality assurance/negligence" approach? Some participants felt that it is essential to use a quality assurance/best practices approach in order to reassure the bar about the quality of mediators.

Some suggested that monitoring should not be the sole responsibility of Local Mediation Committees. Some felt that perhaps there should be a professional association of mediators to develop certain standards. Others felt that mediators should be more directly accountable to the Case Management Masters, with sanctions potentially available in serious cases. Random audits of mediation sessions were suggested, as were mock mediations and assessments by counsel and litigants. It was generally felt that more monitoring would be valuable (but see discussion in Section 6.7 below regarding the work of Local Mediation Committees).

There was extensive discussion of and diverse views expressed about the possible need for "specialized panels" of mediators with expertise in certain areas of law. In Toronto, support for specialized panels was strong. In Ottawa, there was no consensus; the parties just pick mediators on the basis of the needs in the case, since everyone in the community is fairly well known to everyone else. In fact, some felt that the true value of skilled mediators lay in getting the parties to talk and helping them to reach areas of agreement – which did not normally require substantive expertise in the field in question. Other objections to the notion of specialized panels included: specializations would make sense only for assigned mediators; specialized panels would be counter-productive to interest-based mediation; mediators would never get to participate in cases outside the specialty; and such panels would require an extensive effort to verify mediators' claims to certain areas of expertise.

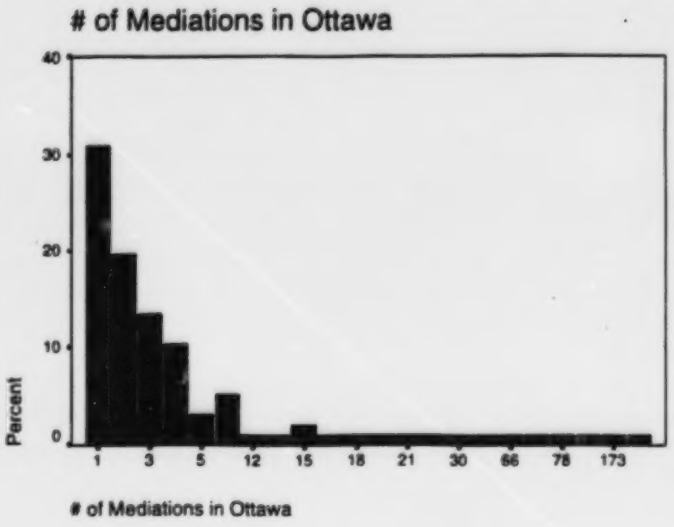
6.5 Concentration of Mediator Activity

In the Interim Report, an early review of the concentration of mediator activity indicated that the vast majority of roster mediators in Ottawa and Toronto had completed only one to three mediations.[69] The data supporting this statement also showed that a majority of the mediations in Ottawa were conducted by only five mediators. Toronto mediations were more dispersed; the ten busiest mediators acted in just over one-third of the cases that went to mandatory mediation in the first 13 months. It seemed important to follow up on those observations, so that

[69] See section 3.2, p. 19, based on Figure A2.6 in the Appendix of the 13-Month Interim Report.

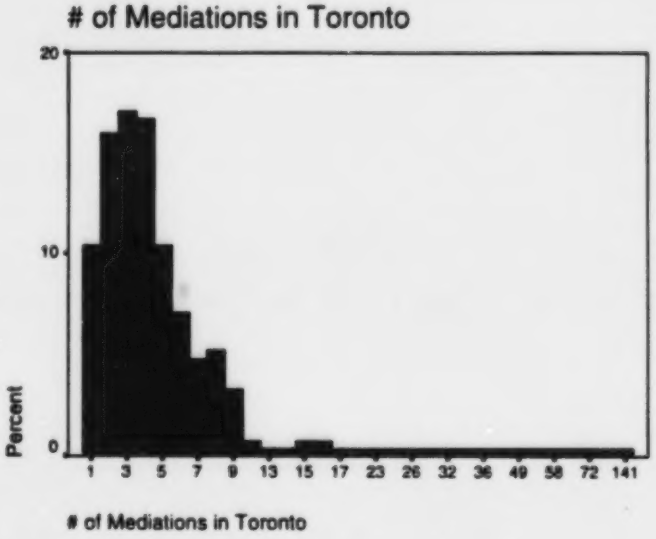
information on how the mediation market has evolved would be available to policymakers considering the future design of mandatory mediation.

Figure 6.3



In Ottawa, where the greatest concentration was observed a year ago, an increased number of mediators have conducted at least one mediation (97, compared with 80 after 13 months). But 30 of those 97 have conducted only one mediation (see Figure 6.3), and the busiest mediators have increased their share of the market. After 23 months, the four busiest mediators have conducted 49.8% of the Ottawa mediations (compared with 46% as of 13 months). The six busiest mediators have conducted 62% of the Ottawa mediations, up from a 57% share. The ten busiest have completed 73%, up from 71%.

Figure 6.4



By contrast, there has been no change in Toronto, even though one might have assumed that as the litigation bar became acquainted with the mediation community, lawyers would gravitate increasingly to particular mediators. In Toronto, the seven busiest mediators conducted 28% of the mediations (both as of 13 months and after 23 months), the ten busiest once again conducted just over one-third of the mediations, and the 15 busiest conducted just over 40%. It took 29 mediators to complete 50% of the mediations in Toronto.[70]

The increasing concentration of mediator activity in Ottawa begs questions about the effects if any of this pattern. Are mediators who are more frequently chosen also more effective? If so, in what ways and why? By opting for a model that uses private mediators, the Mandatory

[70] See Figure 6.4. That figure also shows that a larger proportion of mediators in Toronto rather than Ottawa have conducted three to nine mediations.

Mediation Program has certainly relied more heavily on the operation of market forces for quality assurance.

6.6 Contribution of the Busiest Mediators to Overall Program Performance

The previous section noted the concentration of mediation activity in the hands of a relatively small number of mediators, particularly in Ottawa. The CHAID analysis in the previous chapter also noted that mediations conducted by mediators with experience in five or fewer Rule 24.1 mediations had a higher chance of achieving neither a complete nor partial settlement than did mediations conducted by mediators with more Rule 24.1 experience. Together, both findings could elicit a legitimate concern regarding whether the overall complete settlement rate of the Ontario Mandatory Mediation Program in fact reflects the complete settlement rates of a very small number of individual mediators rather of the program as a whole.

At the outset, it should be clearly noted that the outcome of any mediation will be dependent on a number of factors, only some of which depend on the skill and experience of the mediator. One can, for instance, easily envisage situations in which the mediation outcome depends more on the facts of the case and the skill, knowledge and attitudes of the parties and/or their lawyers.

One also has to consider the direction of causality between the number of mediations conducted by a mediator and the settlement rate of those mediations. It is, for instance, very possible that a lawyer who is positively disposed to and skilled in mediation will select the same mediator over and over. The high settlement rate of the mediator may then really reflect the skills of the lawyer, and not necessarily of the mediator.

Nonetheless – although the scope of the current evaluation did not include the performance of individual mediators -- we did examine the outcomes of mediations by particular mediators.

Figure 6.5 presents the percentage of mediations resulting in a complete settlement for mediators with different levels of Rule 24.1 experience. The first observation is that, there are observable differences in the performance of individual mediators whatever the number of mediations conducted.

Figure 6.5

Mediators: Rate of Complete Settlement by Number of Rule 24.1 Mediations				
	Mediations per mediator			
Complete Settlement Rate	1 to 5	6 to 10	11 to 29	30 & over
0 to 27%	53%	35%	27%	0%
over 27 to 34%	9%	24%	30%	10%
over 34 to 45%	4%	17%	23%	40%
over 45% to 57%	12%	14%	17%	40%
over 57%	21%	11%	3%	10%
Number	191	66	30	20

For instance, the most active 20 mediators had completed 30 or more mediations in Ottawa and Toronto. Of those mediators:

- Two (10%) had complete settlement rates more than 5 percentage points below the overall average of 40%. (The lowest settlement rate was 30%.)
- Eight (40%) of those mediators had settlement rates within 5 percentage points of the overall average; and
- Ten (50%) had complete settlement rates more than 5 percentage points above the overall average – with two of the 10 above 55%, one at 61% and the other at 76%. (The mediator with the highest rate of complete settlement specialized in wrongful dismissal cases, and those cases tend to have a higher rate of complete settlement at mediation than other case types.)

Although 40% of the busiest mediators had a complete settlement rate within 5 percentage points of the overall average, variations in settlement rates that range from 30% to 76% suggest real differences among the busiest mediators.[71]

This conclusion is reinforced by examining the other end of the spectrum, mediators who have conducted five or fewer mandatory mediations.

The overall average rates of complete settlement for the 191 mediators in this category were uniform and low compared to the overall average:

- the 35 mediators who conducted one mandatory mediation had an average settlement rate of 34%;
- the 38 mediators who conducted two mandatory mediations had an average settlement rate of 29%;
- the 41 mediators who conducted three mandatory mediations had an average settlement rate of 36%;
- the groups who conducted four or five (or six) mediations each had an average settlement rate of 30%.

However, their rates of complete settlement varied from zero to 100%[72] -- with roughly a third having complete settlement rates more than 5 percentage points above the overall average.

Similar variability in complete settlement rates is also found among mediators who had conducted 6 to 10 and 11 to 30 Rule 24.1 mediations. Similarly, a significant percentage of each of these groups had a complete settlement rate of more than 5 percentage points over the overall average of 40%:

- 25% of mediators with 6 to 10 Rule 24.1 mediations, and
- 20% of mediators with 11 to 30 Rule 24.1 mediations.

This evidence does not support the contention that overall performance of the mandatory mediation program can be attributed solely to the effectiveness of some high volume mediators and the ineffectiveness of others.[73]

---

[71] Those in the low 40's often had a higher proportion of motor vehicle accident cases.

[72] As would be expected when many individuals conducted only one, two or three mediations.

[73] This analysis of individual variation among mediators has focused on the percentage of mediations resulting a complete settlement. If the analysis looked instead at the percentage of partial settlements and neither-complete-

6.7 Administrative Monitoring of Active Pending Mediations

One of the challenges for implementing mandatory mediation across Ontario will be the development of simple and easy-to-use tools for monitoring its continued effectiveness.

One of the fundamental methods for monitoring the flow of cases in any court system is regular (e.g. monthly) reporting of "active pending" cases. Having a way of counting the number of active pending cases provides court staff with a regular, consistent way of assessing their work and workloads – and provides an indicator of trends in the number of pending cases. If the reports show an increase in pending cases, that may indicate a backlog.

A monthly report on the progress of cases subject to Rule 24.1 would focus on active pending mediations. Such a report would not be difficult to construct, since the Mandatory Mediation Program currently produces Monthly Status Reports that have effectively communicated the number of cases at various stages of the mediation process.

Those reports do not provide specific numbers of active pending mediations in Ottawa or Toronto. However, they do provide an initial basis for measuring pending mediations. Since the Monthly Status Reports indicate the total number of case managed defended cases, and the total number of cases disposed (i.e. cases exempted from mediation, disposed of prior to mediation, or reported as mediations concluded), the difference between these two totals ought to yield the number of cases pending at the time of each monthly report.

In the first months of the program, the number of pending cases would be expected to grow, as the earliest claims are defended, referred to mediation, and subsequently heard and reported upon to the Local Mediation Coordinator. Once the program has been operating for a longer time, a steady state is likely to be achieved, whereby new referrals come in at the same rate as earlier referrals reach an outcome.

Figures 6.6 and 6.7 report the overall numbers as of the September 10, 1999, Monthly Status Report and then show our estimates of the input, output and pending cases for each month from October 1999 to November 2000 – separately for Ottawa and Toronto. The figures show gradual but steady growth in total pending cases between October 1999 and November 2000 -- both in Ottawa and in Toronto.

Note that the pending cases constitute the program's "inventory"--the number of cases in process--and should not be equated with a "backlog". A backlog only exists if the pending inventory is not or cannot be processed within the time expected or required.[74] For example, the

---

nor-partial settlements, the variations would have been much greater. For example, three of the 13 busiest mediators reported partial settlements in 31%, 33% and 35% of their cases, while every one of the other ten reported partial settlements in less than 10% of their cases, including as few as zero or one percent. As a result, the percentage of neither-complete-nor-partial settlements swung between 15% and 67%.

[74] For a discussion of case inventory and case backlog, see Perry S. Millar and Carl Baar, Judicial Administration in Canada (McGill-Queen's University Press, 1981), p. 196.

level of pending cases in Ottawa has grown to a level almost identical to that in Toronto -- even though Ottawa has considerably fewer "cases in" each month. However, the Monthly Status Reports do not show the number of extension-of-time orders, so it may be that the inventory growth in Ottawa is still occurring within the confines allowed by Rule 24.1.

Yet, if extensions of time mean that a large number of mediations are not completed within the normal limits contemplated by the Rule, that is something that those administering the Rule need to know. Thus the monitoring of pending cases – and the determination of the reasons for such levels – should be a priority.

The relative importance of the level of pending cases can also be illustrated from the perspective of how long it would take to clear the inventory of pending cases. For example, if Toronto were to maintain a monthly total of 154 "Cases Out" (the November, 2000 level), its 1195 pending cases could be dealt with in just under eight (7.8) months. However, if Ottawa were to maintain the November 2000 monthly total of 97 "Cases Out", its 1200 pending cases would require over 12 (12.4) months to be dealt with--a period of time presumably longer than anticipated in Rule 24.1.

Whether or not these figures signal the emergence of a backlog, they at least suggest the need to monitor the pending mediation caseload on an ongoing basis.

It should also be noted that the size of the inventory (e.g. seven or 12 months worth of cases) does not show whether individual cases have been "in the pipeline" for an even longer period of time after the selection or assignment of a mediator. These individual cases are currently monitored by the Local Mediation Coordinators so they can do appropriate follow-up. It is important that this practice continue.

The Evaluation Committee needs to be aware that the cases that are pending may not be representative of all cases that have entered the mediation pilot program. For example, the settlement rate for cases in which a mediation has been completed could be higher because these cases are likely to include a disproportionate number of plaintiffs who are moving their claims more expeditiously.

On a positive note, given the large number of roster mediators in both Toronto and Ottawa, the capacity exists to complete a potentially larger number of mediations each month (unlike the situation in a courthouse where a courtroom or a judge may not be available when inventory grows). For instance, over 50% of mediators who have conducted mediations in Ottawa and Toronto have conducted 4 or fewer mediations under Rule 24.1.[75] At the same time, the concentration of mediator activity (especially in Ottawa) may be related to the growth of pending caseload; by selecting the busiest mediators, litigants may wait longer to reach the date of the mediation session.

[75] See Figure A2.6 in Appendix A.

Figure 6.6: Active Pending Mediations: Ottawa Project

	Cases In	Cases Out*	Change to Pending	Cumulative Pending
Total as of Sept 10, 99	834	248	586	586
Oct 1, 1999	141	50	91	677
Nov 1, 1999	112	93	19	696
Dec 1, 1999	98	69	29	725
Jan 1, 2000	113	57	56	781
Feb 1, 2000	98	71	27	808
Mar 1, 2000	125	103	22	830
Apr 1, 2000	138	92	46	876
May 1, 2000	97	88	9	885
June 1, 2000	140	89	51	936
July 1, 2000	114	113	1	937
August 1, 2000	145	72	73	1010
Sept. 1, 2000	127	61	66	1076
Oct. 1, 2000	124	79	45	1121
Nov 1, 2000	125	83	42	1163
Dec 1, 2000	134	97	37	1200

* "Cases out" = sum of actions disposed of prior to mediation (e.g. settlement, dismissal, summary judgment, discontinuances), Total exemptions from mediations, and mediations concluded)

Figure 6.6 Active Pending Mediations: Toronto Pilot Project

	Cases In	Cases Out*	Change to Pending	Cumulative Pending
Total as of Sept 10, 99	1033	300	733	733
Oct 1, 1999	137	71	66	799
Nov 1, 1999	139	120	19	818
Dec 1, 1999	192	113	79	897
Jan 1, 2000	176	159	17	914
Feb 1, 2000	147	118	29	943
Mar 1, 2000	134	155	-21	922
Apr 1, 2000	209	149	60	982
May 1, 2000	163	124	39	1021
June 1, 2000	151	182	-31	990
July 1, 2000	184	163	21	1011
August 1, 2000	176	103	73	1084
Sept. 1, 2000	193	114	79	1163
Oct. 1, 2000	165	146	19	1182
Nov 1, 2000	180	187	-7	1175
Dec 1, 2000	174	154	20	1195

* "Cases out" = sum of actions disposed of prior to mediation (e.g. settlement, dismissal, summary judgment, discontinuances), Total exemptions from mediations, and mediations concluded)

6.8 Other Observations Related to Rules, Procedures and Administration

A number of observations were made during the focus groups and interviews about other aspects of procedure and administration of the mandatory mediation process.

Some Ottawa participants felt that a key to successful start-up of the mandatory mediation process is access to a strong, single (regional) point of contact for consistent information and other "messages". Queries about procedure or about particular cases must be answered promptly, preferably the same business day. Although there were some criticisms of the public information brochure, produced to inform litigants and their counsel about the mandatory mediation procedure (e.g. that it was too long and not user-friendly), many participants felt that distribution of the brochure was useful and should be mandatory in all cases. If the brochure is revised to make it shorter, it should be essential for the new version to indicate where the reader can go for more information (possibly the website for litigants, the Case Management Master for counsel).

Some Ottawa participants felt that the role of the Local Mediation Coordinator has now been weakened and "watered down" by the imposition of additional duties. Even in Toronto the local mediation staff were working to capacity. A number of participants suggested that the resources for this function need to be increased.

It is clear from our evaluation generally, and the effect of early mediation in reducing delay, that the Local Mediation Coordinator's offices in both Ottawa and Toronto have become key elements in the case management process. Rather than detracting from the kind of early intervention and monitoring essential for an effective case management system, mandatory mediation under Rule 24.1 has reinforced these essential functions. That is, mandatory mediation reduces delay because it has helped create better case management. Thus, the resources used to ensure effective administration of Rule 24.1 can and should complement the resources for effective implementation of Rule 77 in the province.

Among the additional comments made about procedure (some by a single participant, others by more than one participant) are presented in Figure 6.7.

Various suggestions were made about the composition and role of the Local Mediation Committee, including that terms should be staggered and limited to two or three years; that the responsibilities placed on the Local Mediation Committee were onerous and could not all be carried out at this time; that the Local Mediation Committee should play a stronger role; that the Local Mediation Committee needed to develop the mentoring, monitoring and professional development aspects in the coming years.

Figure 6.7: Selected Comments Regarding Procedure from Interviews and Focus Groups

- Counsel should be required to file a motion if they wish to replace the mediator;
- Counsel should not be required to file a motion in order to obtain an extension to the time limits, if the parties all consent to an extension;
- Extensions should be available by telephone in order to save fees, paperwork and motions;
- There should not be any rules developed regarding the materials which should be sent to the mediator or what should be included in the compendium;
- Consideration should be given to using some of the more flexible procedures in the CISCO model (for the insurance industry);
- Mediation settlements (absent the names of the litigants) should be published – including a brief description of the matter and the names of the counsel;
- Rule 24.1 should state that mediation must be in person with all named parties;
- Just the contrary – with the consent of the Case Management Master, the mediator and the parties, mediation could take place via teleconferencing or even on-line;
- Simplified Rules cases should be part of the mandatory mediation process, perhaps with shortened timeframes or the option of early neutral evaluation;
- Mediators should not be permitted to complain to the Case Management Master about the conduct of counsel, e.g., in not supporting good-faith negotiation at mediation;
- The wording of the Practice Direction on the participation of parties with the authority to settle was preferable to the Rule 24.1 wording.

Finally, the following were among the other observations made about the administration of the program.[76]

- Some participants suggested that there should be a mixed delivery system for mediation, perhaps not unlike legal aid: that is, some mediators would be retained directly by the parties, while others ("duty mediators") would be on salary for simpler matters;
- The printing and hand-faxing of mediation notices to all parties is a labour-intensive activity for which an alternative would be desirable.

[76] For a number of recommendations agreed upon by mediator organizations, see Cooperating for Improvement: A Report by the Canadian Bar Association (Ontario) – ADR Section, Arbitration and Mediation Institute of Ontario, Inc., and other members of the Dispute Resolution Alliance of Ontario on proposed administrative improvements to The Ontario Mandatory Mediation Program (Dec. 19, 2000). Recommendations cover areas such as: payment for preparation time and facilitating collection of mediators' fees.

Appendix A: Supporting Figures

A2.1a Cases (that are currently Case Managed) Commenced: by Quarter of Commencement by Case Type by Quarter (Ottawa)

City case filed		Quarter of commencement																Total
		1 Q 97	2 Q 97	3 Q 97	4 Q 97	1 Q 98	2 Q 98	3 Q 98	4 Q 98	1 Q 99	2 Q 99	3 Q 99	4 Q 99	1 Q 00	2 Q 00	3 Q 00	4 Q 00	
Ottawa	Contract	110	99	96	123	87	99	102	117	105	120	84	83	97	114	84	60	1580
	Commercial	12.3%	11.6%	11.3%	13.2%	10.7%	11.4%	13.0%	13.7%	13.8%	16.9%	12.6%	12.9%	14.9%	16.4%	14.1%	13.1%	13.1%
	Collection	144	159	179	163	132	148	161	133	175	154	139	129	129	109	90	84	2228
		16.1%	18.6%	21.1%	17.5%	16.2%	17.1%	20.5%	15.6%	23.0%	21.7%	20.9%	20.1%	19.8%	15.7%	15.1%	18.3%	18.5%
	Medical Malpractice	14	16	20	14	16	12	9	16	16	10	9	20	10	12	13	11	218
		1.6%	1.9%	2.4%	1.5%	2.0%	1.4%	1.1%	1.9%	2.1%	1.4%	1.4%	3.1%	1.5%	1.7%	2.2%	2.4%	1.8%
	Motor Vehicle	75	49	71	82	61	77	75	89	56	59	70	57	70	83	71	43	1088
		8.4%	5.7%	8.4%	8.8%	7.5%	8.9%	9.6%	10.4%	7.4%	8.3%	10.5%	8.9%	10.7%	12.0%	11.9%	9.4%	9.0%
	Motor Vehicle FL/CL	1	2	8	7	1	3		6	8	3	4	6	10	14	19	2	94
		1%	.2%	.9%	.7%	.1%	.3%		.7%	1.1%	.4%	.6%	9%	1.5%	2.0%	3.2%	.4%	.8%
	Negligence	59	49	58	44	40	42	51	58	42	42	42	54	41	40	51	46	757
		6.6%	5.7%	6.6%	4.7%	4.9%	4.8%	6.5%	6.8%	5.5%	5.9%	6.3%	8.4%	6.3%	5.8%	8.6%	10.0%	6.3%
	Other	93	81	50	79	75	68	64	75	82	56	72	50	55	64	44	52	1060
		10.4%	9.5%	5.9%	8.5%	9.2%	7.8%	8.2%	8.8%	10.8%	7.9%	10.8%	7.8%	8.4%	9.2%	7.4%	11.4%	8.8%
	Other Professional Malpractice	2	4	3	6	2	4	6	4	2	3	7	3	2	3	5	2	58
		.2%	.5%	.4%	.6%	.2%	.5%	.8%	.5%	.3%	.4%	1.1%	.5%	.3%	.4%	.8%	.4%	.5%
	Real Property	33	31	26	31	25	32	14	20	24	19	14	18	21	21	16	16	361
		3.7%	3.6%	3.1%	3.3%	3.1%	3.7%	1.8%	2.3%	3.2%	2.7%	2.1%	2.8%	3.2%	3.0%	2.7%	3.5%	3.0%
	Trust and Fiduciary Duties	6	2	7	5	4	8	5	14	7	9	14	3	10	5	2	3	104
		.7%	.2%	.8%	.5%	.5%	.9%	.6%	1.6%	.9%	1.3%	2.1%	.5%	1.5%	.7%	.3%	.7%	.9%
	Wrongful Dismissal	34	19	37	31	34	31	18	34	39	29	28	23	25	30	32	14	458
		3.8%	2.2%	4.4%	3.3%	4.2%	3.6%	2.3%	4.0%	5.1%	4.1%	4.2%	3.6%	3.8%	4.3%	5.4%	3.1%	3.8%
	Simplified Rules	272	303	259	305	293	298	232	231	200	191	178	186	178	191	163	124	3606
		30.4%	35.5%	30.5%	32.7%	36.0%	34.4%	29.6%	27.1%	26.3%	26.9%	26.7%	29.3%	27.3%	27.5%	27.4%	27.1%	30.0%
		894	854	850	934	815	867	785	852	761	709	666	641	653	694	595	458	12028
		100.0%	100%	100%	100.0%	100%	100%	100%	100%	100%	100%	100.0%	100%	100%	100.0%	100.0%	100.0%	100.0%

Run prepared Dec 20, 2000

A2.1b Case (that are Currently Managed) Commenced: by Quarter of Commencement by Case Type by Quarter(Toronto)

City case filed		Quarter of commencement																
		1 Q 97	2 Q 97	3 Q 97	4 Q 97	1 Q 98	2 Q 98	3 Q 98	4 Q 98	1 Q 99	2 Q 99	3 Q 99	4 Q 99	1 Q 00	2 Q 00	3 Q 00	4 Q 00	Total
Toronto	Contract	92	74	105	107	154	139	121	115	123	112	116	104	112	103	102	60	1739
	Commercial	19.6%	17.1%	12.8%	12.5%	16.0%	15.1%	15.0%	14.2%	15.9%	15.1%	16.7%	14.4%	15.5%	15.5%	15.8%	13.8%	15.3%
	Collection	100	85	206	170	158	156	141	151	126	130	122	115	114	102	95	78	2049
		21.3%	19.6%	25.2%	19.9%	16.5%	17.0%	17.5%	18.6%	16.3%	17.5%	17.6%	16.0%	15.8%	15.3%	14.8%	17.9%	18.0%
	Medical Malpractice	4	9	13	18	23	21	24	22	17	26	11	18	26	18	24	14	288
		9%	2.1%	1.6%	2.1%	2.7%	2.3%	3.0%	2.7%	2.2%	3.5%	1.6%	2.5%	3.6%	2.7%	3.7%	3.2%	2.5%
	Motor Vehicle	78	90	157	208	187	213	208	231	207	172	170	193	173	162	188	114	2731
		16.6%	20.8%	19.2%	24.4%	19.6%	23.2%	25.8%	28.4%	26.7%	23.1%	24.5%	26.8%	24.0%	24.3%	29.2%	26.2%	24.0%
	Motor Vehicle FL/CL	3	1	1						1	1					2		9
		.6%	.2%	.1%						.1%	.1%					.3%		.1%
	Negligence	49	63	90	103	96	99	94	86	87	102	79	71	77	73	61	37	1267
		10.4%	14.5%	11.0%	12.1%	11.2%	10.8%	11.7%	10.6%	11.2%	13.7%	11.4%	9.8%	10.7%	11.0%	9.5%	8.5%	11.2%
	Other	57	49	107	125	124	138	119	121	126	108	112	124	134	123	105	86	1758
		12.2%	11.3%	13.1%	14.7%	14.5%	15.0%	14.8%	14.9%	16.3%	14.5%	16.2%	17.2%	18.6%	18.5%	16.3%	19.8%	15.5%
	Other Professional Malpractice	8	2	4	4	8	7	5	2	7	6	5	11	1	1	5	2	78
		1.7%	.5%	.5%	.5%	.9%	.8%	.6%	.2%	.9%	.8%	.7%	1.5%	.1%	.2%	.8%	.5%	.7%
	Real Property	29	26	47	41	39	33	34	26	27	31	23	25	21	23	18	12	455
		6.2%	6.0%	5.7%	4.8%	4.6%	3.6%	4.2%	3.2%	3.5%	4.2%	3.3%	3.5%	2.9%	3.5%	2.8%	2.8%	4.0%
	Trust and Fiduciary Duties	3	7	16	19	16	15	13	10	11	11	9	23	10	11	10	7	191
		.6%	1.6%	2.0%	2.2%	1.9%	1.6%	1.6%	1.2%	1.4%	1.5%	1.3%	3.2%	1.4%	1.7%	1.6%	1.6%	1.7%
	Wrongful Dismissal	35	22	54	49	55	59	39	41	43	43	41	35	52	50	33	25	676
		7.5%	5.1%	6.6%	5.7%	6.4%	6.4%	4.8%	5.0%	5.5%	5.8%	5.9%	4.9%	7.2%	7.5%	5.1%	5.7%	5.9%
	Commercial		1			1			2			1	1					6
			.2%			.1%			.2%			.1%	.1%					.1%
		469	433	819	853	854	918	806	812	775	743	693	721	721	666	644	435	11382
		100.0%	100%	100%	100.0%	100%	100%	100%	100%	100%	100%	100.0%	100%	100%	100.0%	100.0%	100.0%	100.0%

Run prepared Dec 20, 2000

A2.2 Case Managed cases: Whether or Not Defended: by Quarter Commenced

City case filed		Case Defended?				Total	
		not defended		defended			
		Count	Row %	Count	Row %	Count	Row %
Ottawa	1 Q 97	397	44.4%	497	55.6%	894	100.0%
	2 Q 97	399	46.7%	455	53.3%	854	100.0%
	3 Q 97	400	47.1%	450	52.9%	850	100.0%
	4 Q 97	488	52.2%	446	47.8%	934	100.0%
	1 Q 98	408	50.1%	407	49.9%	815	100.0%
	2 Q 98	426	49.1%	441	50.9%	867	100.0%
	3 Q 98	346	44.1%	439	55.9%	785	100.0%
	4 Q 98	359	42.1%	493	57.9%	852	100.0%
	1 Q 99	325	42.7%	436	57.3%	761	100.0%
	2 Q 99	319	45.0%	390	55.0%	709	100.0%
	3 Q 99	279	41.9%	387	58.1%	666	100.0%
	4 Q 99	287	44.8%	354	55.2%	641	100.0%
	1 Q 00	288	44.1%	365	55.9%	653	100.0%
	2 Q 00	314	45.2%	380	54.8%	694	100.0%
	3 Q 00	310	52.1%	285	47.9%	595	100.0%
	4 Q 00	365	79.7%	93	20.3%	458	100.0%
	Total	5710	47.5%	6318	52.5%	12028	100.0%
Toronto	1 Q 97	146	31.1%	323	68.9%	469	100.0%
	2 Q 97	152	35.1%	281	64.9%	433	100.0%
	3 Q 97	277	33.8%	542	66.2%	819	100.0%
	4 Q 97	283	33.2%	570	66.8%	853	100.0%
	1 Q 98	261	30.6%	593	69.4%	854	100.0%
	2 Q 98	261	28.4%	657	71.6%	918	100.0%
	3 Q 98	257	31.9%	549	68.1%	806	100.0%
	4 Q 98	234	28.8%	578	71.2%	812	100.0%
	1 Q 99	195	25.2%	580	74.8%	775	100.0%
	2 Q 99	204	27.5%	539	72.5%	743	100.0%
	3 Q 99	194	28.0%	499	72.0%	693	100.0%
	4 Q 99	208	28.8%	513	71.2%	721	100.0%
	1 Q 00	204	28.3%	517	71.7%	721	100.0%
	2 Q 00	206	30.9%	460	69.1%	666	100.0%
	3 Q 00	311	48.3%	333	51.7%	644	100.0%
	4 Q 00	335	77.0%	100	23.0%	435	100.0%
	Total	3728	32.8%	7634	67.2%	11362	100.0%

Run prepared Dec 20, 2000

A2.3 Defence Rates: Case Managed Cases: by Half Year Commenced by Case Type

City case filed		Half Year Commenced								All Half Years Combined
		1997-1st half	1997-2nd half	1998-1st half	1998-2nd half	1999-1st half	1999-2nd half	2000-1st half	2000-2nd half	
Ottawa	Contract Commercial	.79	.70	.76	.74	.76	.75	.74	.59	.73
	Collection	.32	.21	.29	.24	.21	.27	.21	.15	.24
	Medical Malpractice	.83	.74	.75	.72	.73	.79	.55	.33	.69
	Motor Vehicle (incl. FL/CL)	.75	.79	.80	.75	.84	.75	.80	.30	.73
	Negligence	.83	.80	.87	.87	.76	.79	.79	.44	.77
	Other	.65	.66	.59	.80	.77	.73	.70	.42	.67
	Real Property	.45	.37	.33	.38	.40	.41	.52	.41	.41
	Trust and Fiduciary Duties	.75	.83	.75	1.00	1.00	.94	.53	.40	.83
	Wrongful Dismissal (incl. CWD and CVWD)	.94	.93	.88	.96	.88	.92	.89	.74	.90
	Remaining Case Types	.67	.57	.52	.59	.65	.91	.78	.46	.64
	Simplified Rules	.41	.39	.35	.46	.47	.43	.39	.28	.40
	Total	.54	.50	.50	.57	.56	.57	.55	.36	.53
		1748	1784	1682	1637	1470	1307	1347	1053	12023
Toronto	Contract Commercial	.79	.74	.72	.74	.78	.77	.76	.56	.73
	Collection	.38	.43	.43	.43	.43	.41	.53	.27	.42
	Medical Malpractice	.85	.68	.70	.72	.74	.83	.80	.47	.71
	Motor Vehicle (incl. FL/CL)	.81	.80	.83	.79	.85	.79	.74	.30	.75
	Negligence	.73	.74	.78	.77	.84	.87	.74	.37	.75
	Other	.67	.67	.74	.73	.77	.72	.67	.46	.69
	Real Property	.36	.38	.43	.42	.48	.44	.45	.37	.42
	Trust and Fiduciary Duties	.70	.77	.71	.70	.91	.72	.81	.41	.73
	Wrongful Dismissal (incl. CWD and CVWD)	.96	.87	.86	.91	.86	.93	.91	.71	.88
	Remaining Case Types	.64	.82	.73	.79	.79	.77	1.00	.38	.72
	Total	.67	.67	.71	.70	.74	.72	.70	.40	.67
		902	1672	1772	1618	1518	1414	1387	1079	11362

Produced Dec 20, 2000

A2.4 Defended Case Managed Cases Commenced after Jan 3, 1999: by Quarter of Defence by Case Type

City case filed		Quarter of 1st Defence								Total
		1 Q 99	2 Q 99	3 Q 99	4 Q 99	1 Q 00	2 Q 00	3 Q 00	4 Q 00	
Ottawa	Contract Commercial	44	74	77	62	60	78	80	56	531
		24.0%	19.5%	19.7%	17.9%	17.9%	20.6%	20.1%	21.5%	19.9%
	Collection	21	29	33	36	28	28	25	18	218
		11.5%	7.6%	8.5%	10.4%	8.3%	7.4%	6.3%	6.9%	8.2%
	Medical Malpractice	1	8	7	10	7	10	11	8	62
		.5%	2.1%	1.8%	2.9%	2.1%	2.6%	2.8%	3.1%	2.3%
	Motor Vehicle (incl. FL/CL)	14	30	54	41	67	64	76	44	390
		7.7%	7.9%	13.8%	11.8%	19.9%	16.9%	19.1%	16.9%	14.6%
	Negligence	13	26	31	35	35	36	39	31	246
		7.1%	6.8%	7.9%	10.1%	10.4%	9.5%	9.8%	11.9%	9.2%
	Other	18	60	52	38	33	42	43	28	314
		9.8%	15.8%	13.3%	11.0%	9.8%	11.1%	10.8%	10.7%	11.7%
	Real Property	2	10	8	6	6	14	10	8	64
		1.1%	2.6%	2.1%	1.7%	1.8%	3.7%	2.5%	3.1%	2.4%
	Trust and Fiduciary Duties	3	7	11	7	3	4	5	2	42
		1.6%	1.8%	2.8%	2.0%	.9%	1.1%	1.3%	.8%	1.6%
	Wrongful Dismissal (incl. CWD and CVWD)	17	33	25	24	24	22	30	15	190
		9.3%	8.7%	6.4%	6.9%	7.1%	5.8%	7.5%	5.7%	7.1%
	Remaining Case Types	4	6	9	8	10	7	8	3	55
		2.2%	1.6%	2.3%	2.3%	3.0%	1.8%	2.0%	1.1%	2.1%
	Simplified Rules	46	96	83	79	63	74	71	48	560
		25.1%	25.3%	21.3%	22.8%	18.8%	19.5%	17.8%	18.4%	21.0%
		183	380	390	346	336	379	398	261	2673
		100%	100%	100%	100%	100%	100%	100%	100%	100%
Toronto	Contract Commercial	48	71	95	87	89	65	95	57	607
		21.8%	15.4%	18.9%	16.7%	18.2%	13.1%	18.4%	16.9%	17.2%
	Collection	24	51	48	55	50	60	43	36	367
		10.9%	11.1%	9.6%	10.6%	10.2%	12.1%	8.3%	10.7%	10.4%
	Medical Malpractice	2	14	10	14	12	17	22	17	108
		.9%	3.0%	2.0%	2.7%	2.5%	3.4%	4.3%	5.0%	3.1%
	Motor Vehicle (incl. FL/CL)	42	119	135	131	140	145	144	97	953
		19.1%	25.9%	26.9%	25.1%	28.7%	29.3%	28.0%	28.7%	26.9%
	Negligence	25	66	63	86	48	53	58	36	435
		11.4%	14.3%	12.5%	16.5%	9.8%	10.7%	11.3%	10.7%	12.3%
	Other	38	75	91	85	75	93	91	60	608
		17.3%	16.3%	18.1%	16.3%	15.4%	18.8%	17.7%	17.8%	17.2%
	Real Property	6	11	15	10	10	11	13	4	80
		2.7%	2.4%	3.0%	1.9%	2.0%	2.2%	2.5%	1.2%	2.3%
	Trust and Fiduciary Duties	6	8	6	12	11	12	6	6	67
		2.7%	1.7%	1.2%	2.3%	2.3%	2.4%	1.2%	1.8%	1.9%
	Wrongful Dismissal (incl. CWD and CVWD)	27	38	34	32	49	37	39	23	279
		12.3%	8.3%	6.8%	6.1%	10.0%	7.5%	7.6%	6.8%	7.9%
	Remaining Case Types	2	7	5	9	2	2	4	2	32
		.9%	1.5%	1.0%	1.7%	.4%	.4%	.8%	.6%	.9%
		220	460	502	521	488	495	515	338	3539
		100%	100%	100%	100%	100%	100%	100%	100%	100%

Prepared Dec 20, 2000

• The case type "Other" includes cases for which the lawyers do not fill in valid case types on court documents. The case type "Remaining Case Types" includes (if applicable under Rule 24.1): Application Other, Bankruptcy, Breach of Trust, Class Action, Criminal Compensation Order, Claim – L/T, Commercial List Other, Commercial, Estates, Employment Standards, Intended Action, Landlord and Tenant, Other Professional Malpractice, Party & Party Assessment, Public Inst Inspect Panel, Product Liability, Restitution Order, Tax Act, Trial of an Issue".

A2.5 Defended Case Managed Cases Commenced after Jan 3, 1999: by Summary Status at Nov 30, 2000

City case filed		Quarter of 1st Defence								Total
		1 Q 99	2 Q 99	3 Q 99	4 Q 99	1 Q 00	2 Q 00	3 Q 00	4 Q 00	
Ottawa	Mediation Date before Defence Date	2	1	2		2	15	14	1	37
		1.1%	.3%	.5%		.6%	4.0%	3.5%	.4%	1.4%
	Disposed without mediation session	73	101	98	84	66	44	38	9	513
		39.9%	26.6%	25.1%	24.3%	19.6%	11.6%	9.5%	3.4%	19.2%
	Mediation held	90	211	219	198	161	137	76	5	1097
		49.2%	55.5%	56.2%	57.2%	47.9%	36.1%	19.1%	1.9%	41.0%
	No Mediation - 0 to 90 days since defence							98	246	344
								24.6%	94.3%	12.9%
	No Mediation - 91 to 150 days since defence							172		172
								43.2%		6.4%
	No Mediation - over 150 days since defence	18	67	71	64	107	183			510
		9.8%	17.6%	18.2%	18.5%	31.8%	48.3%			19.1%
	Total	183	380	390	346	336	379	398	261	2673
		100.0%	100%	100.0%	100.0%	100%	100%	100%	100%	100.0%
Toronto	Mediation Date before Defence Date			1	3	1	4	3		12
				.2%	.6%	.2%	.8%	.6%		.3%
	Disposed without mediation session	47	85	85	88	61	47	24	1	438
		21.4%	18.5%	16.9%	16.9%	12.5%	9.5%	4.7%	.3%	12.4%
	Mediation held	154	317	344	350	325	307	176	7	1980
		70.0%	68.9%	68.5%	67.2%	66.6%	62.0%	34.2%	2.1%	55.9%
	No Mediation - 0 to 90 days since defence							129	330	459
								25.0%	97.6%	13.0%
	No Mediation - 91 to 150 days since defence							183		183
								35.5%		5.2%
	No Mediation - over 150 days since defence	16	41	67	79	101	137			441
		7.3%	8.9%	13.3%	15.2%	20.7%	27.7%			12.5%
	Total	220	460	502	521	488	495	515	338	3539
		100.0%	100%	100.0%	100.0%	100%	100%	100%	100%	100.0%

Prepared Dec 20, 2000 (N.B. Incomplete data provided on exemptions in both Ottawa and Toronto)

A2.6 (1 of 2) Number of Mediations per Mediator (both Cities) by City of Most Mediations

		City Most Mediations Conducted		
		Ottawa	Toronto	Total
# of Mandatory Mediations in Both Cities	1	10	22	32
		19.6%	8.6%	10.5%
	2	3	34	37
		5.9%	13.3%	12.1%
	3	3	41	44
		5.9%	16.1%	14.4%
	4	8	39	47
		15.7%	15.3%	15.4%
	5	4	26	30
		7.8%	10.2%	9.8%
	6	3	20	23
		5.9%	7.8%	7.5%
	7		18	18
			7.1%	5.9%
	8	1	13	14
		2.0%	5.1%	4.6%
	9		12	12
			4.7%	3.9%
	10	1	2	3
		2.0%	.8%	1.0%
	11	1	3	4
		2.0%	1.2%	1.3%
	12	1	1	2
		2.0%	.4%	.7%
	13	1		1
		2.0%		.3%
	14		2	2
			.8%	.7%
	15	2	1	3
		3.9%	.4%	1.0%
	16	1	3	4
		2.0%	1.2%	1.3%
	17		2	2
			.8%	.7%
	18	1		1
		2.0%		.3%
	19		1	1
			.4%	.3%
	21	1		1
		2.0%		.3%
	22	1		1
		2.0%		.3%
	23		1	1
			.4%	.3%
	25		1	1
			.4%	.3%

Produced Dec 20, 2000: Mediator Reports to Dec 20

A2.6 (2 of 2) Number of Mediations per Mediator (both Cities) by City of Most Mediations

		City Most Mediations Conducted		
		Ottawa	Toronto	Total
# of Mandatory Mediations in Both Cities	26	1	1	2
		2.0%	.4%	.7%
	29		1	1
			.4%	.3%
	30	1		1
		2.0%		.3%
	32		1	1
			.4%	.3%
	35		1	1
			.4%	.3%
	36		1	1
			.4%	.3%
	39		1	1
			.4%	.3%
	44	1		1
		2.0%		.3%
	49		1	1
			.4%	.3%
	53		1	1
			.4%	.3%
	62		1	1
			.4%	.3%
	66	1		1
		2.0%		.3%
	69	1		1
		2.0%		.3%
	70		1	1
			.4%	.3%
	72		1	1
			.4%	.3%
	77		1	1
			.4%	.3%
	83	1		1
		2.0%		.3%
	112	1		1
		2.0%		.3%
	142		1	1
			.4%	.3%
	173	1		1
		2.0%		.3%
	186	1		1
		2.0%		.3%
Total		51	255	306
		100.0%	100.0%	100.0%

Produced Dec 20, 2000: Mediator Reports to Dec 20

A2.7 Mandatory Mediations Held: by Quarter held: : by Case Type

City case filed		Quarter of 1st Mediation Session								
		1 Q 99	2 Q 99	3 Q 99	4 Q 99	1 Q 00	2 Q 00	3 Q 00	4 Q 00	Total
Ottawa	Contract Commercial	1	18	34	48	34	45	31	19	230
		20.0%	25.4%	20.0%	23.3%	17.4%	22.2%	19.9%	18.3%	20.7%
	Collection		7	21	12	21	14	15	4	94
			9.9%	12.4%	5.8%	10.8%	6.9%	9.6%	3.8%	8.5%
	Medical Malpractice			1	4	3	3	1	3	15
				.6%	1.9%	1.5%	1.5%	.6%	2.9%	1.4%
	Motor Vehicle (incl. FL/CL)		2	10	18	15	26	29	27	127
			2.8%	5.9%	8.7%	7.7%	12.8%	18.6%	26.0%	11.4%
	Negligence		3	7	12	16	20	11	10	79
			4.2%	4.1%	5.8%	8.2%	9.9%	7.1%	9.6%	7.1%
	Other	1	7	16	24	27	20	12	10	117
		20.0%	9.9%	9.4%	11.7%	13.8%	9.9%	7.7%	9.6%	10.5%
	Real Property		1	7	3	2	5	3	1	22
			1.4%	4.1%	1.5%	1.0%	2.5%	1.9%	1.0%	2.0%
	Trust & Fiduciary Duties		2	1	7	3	4	2		19
			2.8%	.6%	3.4%	1.5%	2.0%	1.3%		1.7%
	Wrongful Dismissal (incl. CWD and CVWI	1	10	20	24	23	18	14	9	119
		20.0%	14.1%	11.8%	11.7%	11.8%	8.9%	9.0%	8.7%	10.7%
	Remaining Case Types			4	4	8	5	2	4	27
				2.4%	1.9%	4.1%	2.5%	1.3%	3.8%	2.4%
	Simplified Rules	2	21	49	50	43	43	36	17	261
		40.0%	29.6%	28.8%	24.3%	22.1%	21.2%	23.1%	16.3%	23.5%
	Total	5	71	170	206	195	203	156	104	1110
		100%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Toronto	Contract Commercial	1	20	45	65	63	59	45	42	340
		25.0%	15.7%	18.8%	21.8%	18.1%	15.9%	15.6%	15.2%	17.4%
	Collection		20	21	32	29	43	23	25	193
			15.7%	8.8%	10.7%	8.3%	11.6%	8.0%	9.0%	9.9%
	Medical Malpractice		2	3	2	8	8	5	9	37
			1.6%	1.3%	.7%	2.3%	2.2%	1.7%	3.2%	1.9%
	Motor Vehicle (incl. FL/CL)	1	18	58	66	90	107	88	80	508
		25.0%	14.2%	24.3%	22.1%	25.8%	28.8%	30.6%	28.9%	26.0%
	Negligence	1	16	28	37	56	38	29	33	238
		25.0%	12.6%	11.7%	12.4%	16.0%	10.2%	10.1%	11.9%	12.2%
	Other	1	18	41	59	54	63	51	51	338
		25.0%	14.2%	17.2%	19.8%	15.5%	16.9%	17.7%	18.4%	17.3%
	Real Property		2	5	4	7	9	4	8	39
			1.6%	2.1%	1.3%	2.0%	2.4%	1.4%	2.9%	2.0%
	Trust & Fiduciary Duties		4	7	3	9	8	10	2	43
			3.1%	2.9%	1.0%	2.6%	2.2%	3.5%	.7%	2.2%
	Wrongful Dismissal (incl. CWD and CVWI		27	26	26	29	34	32	24	198
			21.3%	10.9%	8.7%	8.3%	9.1%	11.1%	8.7%	10.1%
	Remaining Case Types			5	4	4	3	1	3	20
				2.1%	1.3%	1.1%	.8%	.3%	1.1%	1.0%
	Total	4	127	239	298	349	372	288	277	1954
		100%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Prepared Dec 20, 2000: Mediator Reports to Dec 20

A2.8A Ottawa: Mandatory Mediations Held: Key Characteristics: : by Quarter Held

City case filed			Quarter of 1st Mediation Session								Total
			1 Q 99	2 Q 99	3 Q 99	4 Q 99	1 Q 00	2 Q 00	3 Q 00	4 Q 00	
Ottawa	Mediator Assigned?	Mediator Chosen by Parties	4	54	129	164	166	175	127	84	903
			80.0%	76.1%	75.9%	79.6%	85.1%	86.2%	81.4%	80.8%	81.4%
		Assigned by Coordinator	1	17	40	41	28	28	29	18	202
			20.0%	23.9%	23.5%	19.9%	14.4%	13.8%	18.6%	17.3%	18.2%
	Roster Mediator?	Non-roster mediator			3	2	2	2	1		10
					1.8%	1.0%	1.0%	1.0%	.6%		.9%
		Roster mediator	5	71	167	204	193	201	155	104	1100
			100.0%	100%	98.2%	99.0%	99.0%	99.0%	99.4%	100%	99.1%
	Source and Type of Mediator				1	1	1			2	5
					.6%	.5%	.5%			1.9%	.5%
		Selected from roster	4	54	128	163	164	173	126	84	896
			80.0%	76.1%	75.3%	79.1%	84.1%	85.2%	80.8%	80.8%	80.7%
		Selected from off roster			1	1	2	2	1		7
					.6%	.5%	1.0%	1.0%	.6%		.6%
		Assigned by local mediation coordinator	1	17	40	41	28	28	29	18	202
			20.0%	23.9%	23.5%	19.9%	14.4%	13.8%	18.6%	17.3%	18.2%
	Number of Mediation Sessions	0		7	18	28	30	22	10	10	125
				9.9%	10.6%	13.6%	15.4%	10.8%	6.4%	9.6%	11.3%
		1	5	61	150	176	161	174	143	92	962
			100.0%	85.9%	88.2%	85.4%	82.6%	85.7%	91.7%	88.5%	86.7%
		2		3	2	2	4	7	3	2	23
				4.2%	1.2%	1.0%	2.1%	3.4%	1.9%	1.9%	2.1%
	Number of defendants named on claim	0			1	1	2		1		5
					.6%	.5%	1.0%		.6%		.5%
		1	4	41	98	116	102	109	80	56	606
			80.0%	57.7%	57.6%	56.3%	52.3%	53.7%	51.3%	53.8%	54.6%
		2	1	18	37	45	49	43	47	26	266
			20.0%	25.4%	21.8%	21.8%	25.1%	21.2%	30.1%	25.0%	24.0%
		3 to 5		12	27	36	37	45	26	18	201
				16.9%	15.9%	17.5%	19.0%	22.2%	16.7%	17.3%	18.1%
		6 or more			7	8	5	6	2	4	32
					4.1%	3.9%	2.6%	3.0%	1.3%	3.8%	2.9%
	Size of claim		5	71	170	206	195	203	156	104	1110
			100.0%	100%	100.0%	100.0%	100.0%	100.0%	100.0%	100%	100.0%
	Total		5	71	170	206	195	203	156	104	1110
			100.0%	100%	100.0%	100.0%	100.0%	100.0%	100.0%	100%	100.0%

Prepared Dec 20, 2000: Mediator Reports to Dec 20

A2.6B Toronto: Mandatory Mediations Held: Key Characteristics: : by Quarter Held

City case filed			Quarter of 1st Mediation Session								
			1 Q 99	2 Q 99	3 Q 99	4 Q 99	1 Q 00	2 Q 00	3 Q 00	4 Q 00	Total
Toronto	Mediator Assigned?	Unknown				1					1
						.3%					.1%
		Mediator Chosen by Parties	3	63	125	149	193	206	155	151	1045
			75.0%	49.6%	52.3%	50.0%	55.3%	55.4%	53.8%	54.5%	53.5%
		Assigned by Coordinator	1	64	114	148	156	166	133	126	908
			25.0%	50.4%	47.7%	49.7%	44.7%	44.6%	46.2%	45.5%	46.5%
	Roster Mediator?	Non-roster mediator		7	20	19	14	22	25	13	120
				5.5%	8.4%	6.4%	4.0%	5.9%	8.7%	4.7%	6.1%
		Roster mediator	4	120	219	279	335	350	263	264	1834
			100.0%	94.5%	91.6%	93.6%	96.0%	94.1%	91.3%	95.3%	93.9%
	Source and Type of Mediator					1					1
						.3%					.1%
		Selected from roster	3	56	106	131	179	184	130	139	928
			75.0%	44.1%	44.4%	44.0%	51.3%	49.5%	45.1%	50.2%	47.5%
		Selected from off roster		7	19	18	14	22	25	12	117
				5.5%	7.9%	6.0%	4.0%	5.9%	8.7%	4.3%	6.0%
		Assigned by local mediation coordinator	1	64	114	148	156	166	133	126	908
			25.0%	50.4%	47.7%	49.7%	44.7%	44.6%	46.2%	45.5%	46.5%
	Number of Mediation Sessions	0		3	3	6	3	2	2	1	20
				2.4%	1.3%	2.0%	.9%	.5%	.7%	.4%	1.0%
		1	4	115	224	283	325	357	278	274	1860
			100.0%	90.6%	93.7%	95.0%	93.1%	96.0%	96.5%	98.9%	95.2%
		2		6	12	7	18	11	7	2	63
				4.7%	5.0%	2.3%	5.2%	3.0%	2.4%	.7%	3.2%
		3		2		1	2	2	1		8
				1.6%		.3%	.6%	.5%	.3%		.4%
		4				1	1				2
						.3%	.3%				.1%
		6		1							1
				.8%							.1%
	Number of defendants named on claim	0		1		1					2
				.8%		.3%					.1%
		1	2	58	102	131	165	184	117	142	901
			50.0%	45.7%	42.7%	44.1%	47.3%	49.5%	40.6%	51.3%	46.1%
		2	1	36	70	79	86	97	91	60	520
			25.0%	28.3%	29.3%	26.6%	24.6%	26.1%	31.6%	21.7%	26.6%
		3 to 5		25	54	68	78	72	64	58	419
				19.7%	22.6%	22.9%	22.3%	19.4%	22.2%	20.9%	21.5%
		6 or more	1	7	13	18	20	19	16	17	111
			25.0%	5.5%	5.4%	6.1%	5.7%	5.1%	5.6%	6.1%	5.7%
	Size of claim		4	127	239	298	349	372	288	277	1954
			100.0%	100%	100.0%	100.0%	100.0%	100.0%	100.0%	100%	100.0%
	Total		4	127	239	298	349	372	288	277	1954
			100.0%	100%	100.0%	100.0%	100.0%	100.0%	100.0%	100%	100.0%

Prepared Dec 20, 2000: Mediator Reports to Dec 20

A2.9A Mandatory Mediations Held: Key Characteristics: by Case Type

City case filed			Remaining Case Types	Contract Commercial	Collection	Medical Malpractice	Motor Vehicle (incl. FL/CL)	Negligence	Other	Real Property	Trust & Fiduciary Duties	Wrongful Dismissal (incl. CWD and CVWD)	Simplified Rules	Total
Ottawa	Source and Type of Mediator	Selected from roster	20	192	59	14	113	71	94	15	12	103	204	897
			74.1%	83.5%	62.8%	93.3%	89.0%	89.9%	80.3%	68.2%	63.2%	86.6%	77.9%	80.7%
		Selected from off roster		1					4			1	1	7
				.4%					3.4%			.8%	.4%	.6%
		Assigned by local mediation coordinator	7	35	34	1	14	8	19	7	7	14	56	202
			25.9%	15.2%	36.2%	6.7%	11.0%	10.1%	16.2%	31.8%	36.8%	11.8%	21.4%	18.2%
	Number of Mediation Sessions	1	23	202	82	13	104	71	108	18	16	96	230	963
			85.2%	87.8%	87.2%	86.7%	81.9%	89.9%	92.3%	81.8%	84.2%	80.7%	87.8%	86.7%
		0	4	23	12	2	20	7	5	2	3	17	30	125
			14.8%	10.0%	12.8%	13.3%	15.7%	8.9%	4.3%	9.1%	15.8%	14.3%	11.5%	11.3%
		2		5			3	1	4	2		6	2	23
				2.2%			2.4%	1.3%	3.4%	9.1%		5.0%	.8%	2.1%
	Number of defendants named on claim	0					2						3	5
							1.6%						1.1%	.5%
		1	14	123	43	8	59	33	71	8	4	91	152	608
			51.9%	53.5%	45.7%	53.3%	46.5%	41.8%	60.7%	36.4%	21.1%	76.5%	58.0%	54.5%
		2	7	55	31	3	48	19	18	10	6	15	55	267
			25.9%	23.9%	33.0%	20.0%	37.8%	24.1%	15.4%	45.5%	31.6%	12.6%	21.0%	24.0%
		3 to 5	5	43	20	2	17	24	26	1	8	11	44	201
			18.5%	18.7%	21.3%	13.3%	13.4%	30.4%	22.2%	4.5%	42.1%	9.2%	16.8%	18.1%
		6 or more	1	9		2	1	3	2	3	1	2	8	32
			3.7%	3.9%		13.3%	.8%	3.8%	1.7%	13.6%	5.3%	1.7%	3.1%	2.9%
	Total		27	230	94	15	127	79	117	22	19	119	262	1111
			100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Prepared Dec 20, 2000: Mediator Reports to Dec 20

A2.9B Mandatory Mediations Held: Key Characteristics: by Case Type

City case filed			Remain - ing Case Types	Contract Com- mercial	Collec- tion	Medical Malprac- tice	Motor Vehicle (incl. FL/CL)	Negli- gence	Other	Real Property	Trust & Fiduc- iary Duties	Wrong- ful Dismis- sal (incl. CWD and CVWD)	Total
Toronto	Source and Type of Mediator	Selected from roster	7	161	93	16	249	107	158	17	16	106	930
			35.0%	47.4%	47.9%	43.2%	49.0%	45.0%	46.6%	42.5%	37.2%	53.5%	47.5%
		Selected from off roster		23	3	1	31	16	23	5	4	11	117
				6.8%	1.5%	2.7%	6.1%	6.7%	6.8%	12.5%	9.3%	5.6%	6.0%
		Assigned by local mediation coordinator	12	156	98	20	228	115	158	18	23	81	909
			60.0%	45.9%	50.5%	54.1%	44.9%	48.3%	46.6%	45.0%	53.5%	40.9%	46.4%
	Number of Mediation Sessions	1	17	315	185	35	497	230	318	37	40	188	1862
			85.0%	92.6%	95.4%	94.6%	97.8%	96.6%	93.8%	92.5%	93.0%	94.9%	95.1%
		0		6	2		2	1	6	1		3	21
				1.8%	1.0%		.4%	.4%	1.8%	2.5%		1.5%	1.1%
		2	3	15	7	2	7	4	13	2	3	7	63
			15.0%	4.4%	3.6%	5.4%	1.4%	1.7%	3.8%	5.0%	7.0%	3.5%	3.2%
		3		4			2	1	1				8
				1.2%			.4%	.4%	.3%				.4%
		4						1	1				2
								.4%	.3%				.1%
		6						1					1
								.4%					.1%
	Number of defendants named on claim	0			1		1						2
					.5%		.2%						.1%
		1	11	158	90	15	211	87	163	10	10	146	901
			57.9%	46.5%	46.4%	40.5%	41.5%	36.6%	48.1%	25.0%	23.3%	73.7%	46.1%
		2	5	80	52	10	175	70	68	12	12	36	520
			26.3%	23.5%	26.8%	27.0%	34.4%	29.4%	20.1%	30.0%	27.9%	18.2%	26.6%
		3 to 5	1	77	41	8	109	63	84	14	11	12	420
			5.3%	22.6%	21.1%	21.6%	21.5%	26.5%	24.8%	35.0%	25.6%	6.1%	21.5%
		6 or more	2	25	10	4	12	18	24	4	10	4	113
			10.5%	7.4%	5.2%	10.8%	2.4%	7.6%	7.1%	10.0%	23.3%	2.0%	5.8%
	Total		20	340	194	37	508	238	339	40	43	198	1957
			100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Prepared Dec 20, 2000: Mediator Reports to Dec 20

A3.2 Defended Case Managed Cases Commenced after Jan 3, 1999: by Status at Nov 30, 2000

City case filed		Quarter of 1st Defence								Total
		1 Q 99	2 Q 99	3 Q 99	4 Q 99	1 Q 00	2 Q 00	3 Q 00	4 Q 00	
Ottawa	Mediation Date before Defence Date	2	1	2		2	15	14	1	37
		1.1%	.3%	.5%		.6%	4.0%	3.5%	.4%	1.4%
	Disposed without mediation session	73	101	98	84	66	44	38	9	513
		39.9%	26.6%	25.1%	24.3%	19.6%	11.6%	9.5%	3.4%	19.2%
	Mediation held within 90 days of Defence	36	90	119	91	68	68	48	5	525
		19.7%	23.7%	30.5%	26.3%	20.2%	17.9%	12.1%	1.9%	19.6%
	Mediation held 90 to 150 days after Defence	28	75	50	62	61	45	28		349
		15.3%	19.7%	12.8%	17.9%	18.2%	11.9%	7.0%		13.1%
	Mediation held more than 150 days from Defence	26	46	50	45	32	24			223
		14.2%	12.1%	12.8%	13.0%	9.5%	6.3%			8.3%
	No Mediation (0 to 90) days since defence							98	246	344
								24.6%	94.3%	12.9%
	No Mediation (91 to 150) mediator select/assign							153		153
								38.4%		5.7%
	No Mediation (91 to 150) days - none of above							19		19
								4.8%		.7%
	No Mediation (over 150 days -form 24.1B	1	7	2	6	9	13			38
		.5%	1.8%	.5%	1.7%	2.7%	3.4%			1.4%
	No Mediation (over 150) mediator select/assign	16	60	64	51	82	146			419
		8.7%	15.8%	16.4%	14.7%	24.4%	38.5%			15.7%
	No Mediation (over 150) days - none of above	1		5	7	16	24			53
		.5%		1.3%	2.0%	4.8%	6.3%			2.0%
	Total	183	380	390	346	336	379	398	261	2673
		100.0%	100%	100%	100.0%	100.0%	100%	100%	100%	100%
Toronto	Mediation Date before Defence Date			1	3	1	4	3		12
				.2%	.6%	.2%	.8%	.6%		.3%
	Disposed without mediation session	47	85	85	88	61	47	24	1	438
		21.4%	18.5%	16.9%	16.9%	12.5%	9.5%	4.7%	.3%	12.4%
	Mediation held within 90 days of Defence	86	139	150	140	162	132	136	7	952
		39.1%	30.2%	29.9%	26.9%	33.2%	26.7%	26.4%	2.1%	26.9%
	Mediation held 90 to 150 days after Defence	39	115	113	136	109	143	40		695
		17.7%	25.0%	22.5%	26.1%	22.3%	28.9%	7.8%		19.6%
	Mediation held more than 150 days from Defence	29	63	81	74	54	32			333
		13.2%	13.7%	16.1%	14.2%	11.1%	6.5%			9.4%
	No Mediation (0 to 90) days since defence							129	330	459
								25.0%	97.6%	13.0%
	No Mediation (91 to 150) mediator select/assign							166		166
								32.2%		4.7%
	No Mediation (91 to 150) days - none of above							17		17
								3.3%		.5%
	No Mediation (over 150 days -form 24.1B	2	7	8	20	28	45			110
		.9%	1.5%	1.6%	3.8%	5.7%	9.1%			3.1%
	No Mediation (over 150) mediator select/assign	2	20	25	37	53	77			214
		.9%	4.3%	5.0%	7.1%	10.9%	15.6%			6.0%
	No Mediation (over 150) days - none of above	4	7	19	17	20	15			82
		1.8%	1.5%	3.8%	3.3%	4.1%	3.0%			2.3%
	No Mediation (over 150) -form 24.1D	3	2	6	2					13
		1.4%	.4%	1.2%	.4%					.4%
	No Mediation (over 150) extension to before Feb 1	5	5	9	3					22
		2.3%	1.1%	1.8%	.6%					.6%
	Total	220	460	502	521	488	495	515	338	3539
		100.0%	100%	100%	100.0%	100.0%	100%	100%	100%	100%

Prepared Dec 20, 2000 (N.B. complete exemption granted data not provided)

A3.5 Percent of Defended Cases Disposed by Nov 30, 2000: by Half Year of 1st Defence by Case Type

City case filed			Half Year of 1st Defence								All Half Years Combined
			1997-1st half	1997-2nd half	1998-1st half	1998-2nd half	1999-1st half	1999-2nd half	2000-1st half	2000-2nd half	
Ottawa	Contract Commercial		.92	.90	.89	.88	.76	.59	.34	.16	.68
	Collection		.91	.89	.93	.80	.78	.63	.39	.09	.72
	Medical Malpractice		.83	.76	.73	.75	.42	.56	.11	.00	.52
	Motor Vehicle (incl. FL/CL)		.96	.90	.90	.85	.78	.51	.27	.09	.62
	Negligence		.87	.90	.91	.69	.71	.51	.36	.04	.62
	Other		.89	.92	.82	.77	.60	.52	.33	.17	.64
	Real Property		.84	.86	1.00	.82	.65	.43	.25	.06	.62
	Trust and Fiduciary Duties		.60	.88	.88	.79	.79	.33	.00	.14	.58
	Wrongful Dismissal (incl. CWD and CVWD)		.98	.97	.93	1.00	.98	.82	.53	.27	.82
	Remaining Case Types		1.00	1.00	.83	1.00	.69	.44	.29	.09	.65
	Simplified Rules		.95	.96	.95	.91	.87	.77	.54	.17	.81
	Total	Rate	.92	.91	.89	.83	.76	.61	.37	.13	.69
		Count	637	894	832	865	930	770	728	662	6318
Toronto	Contract Commercial		.76	.86	.84	.69	.68	.56	.30	.07	.59
	Collection		.79	.89	.85	.81	.73	.57	.38	.04	.66
	Medical Malpractice		1.00	.84	.69	.55	.40	.44	.17	.00	.41
	Motor Vehicle (incl. FL/CL)		.89	.81	.88	.69	.60	.46	.33	.05	.56
	Negligence		.87	.86	.78	.75	.60	.47	.22	.04	.57
	Other		.67	.85	.84	.76	.68	.52	.32	.08	.57
	Real Property		.92	.90	.87	.65	.58	.58	.33	.06	.63
	Trust and Fiduciary Duties		.50	.85	.73	.63	.50	.47	.42	.08	.55
	Wrongful Dismissal (incl. CWD and CVWD)		.92	.97	.94	.88	.81	.71	.47	.06	.73
	Remaining Case Types		.92	.90	.67	.50	.38	.27	.25	.00	.53
	Total	Rate	.81	.87	.84	.70	.64	.51	.33	.06	.59
		Count	378	851	1091	1163	1182	1109	1000	860	7634

Produced Dec 20, 2000

A.4.1B: Toronto: Variables Related to costs: by Number of Defendants Named on Claim

City case filed			Number of Defendants Named					
			Not known	one	two	3 to 5	6 or more	Total
Toronto	Number of Mediation Sessions	1	2	867	492	397	104	1862
			66.7%	96.2%	94.6%	94.5%	92.0%	95.1%
		0		12	4	4	1	21
				1.3%	.8%	1.0%	.9%	1.1%
		2	1	21	21	13	7	63
			33.3%	2.3%	4.0%	3.1%	6.2%	3.2%
		3		1	2	4	1	8
				.1%	.4%	1.0%	.9%	.4%
		4				2		2
						.5%		.1%
		6			1			1
					.2%			.1%
	Summary Mediation Disposition	Neither Completely Settled nor specific issues settled		338	243	169	50	800
				37.5%	46.7%	40.2%	44.2%	40.9%
		Partially Settled: 'other' issue(s) - no statement issue(s)		64	27	38	7	136
				7.1%	5.2%	9.0%	6.2%	6.9%
		Partially Settled: issue(s) on Statement - no 'other(s)'	1	70	35	44	23	173
			33.3%	7.8%	6.7%	10.5%	20.4%	8.8%
		Partially Settled: issue(s) on Statement plus 'other(s)'		42	21	28	10	101
				4.7%	4.0%	6.7%	8.8%	5.2%
		Completely settled by end of Mediation	2	347	175	135	20	679
			66.7%	38.5%	33.7%	32.1%	17.7%	34.7%
		Completely settled within 7 days of mediation		40	19	6	3	68
				4.4%	3.7%	1.4%	2.7%	3.5%
	Mediation Duration: Day 1	0 to 2 hours		171	115	89	14	389
				19.0%	22.1%	21.2%	12.4%	19.9%
		Over 2 to 3 hours	1	410	242	172	47	872
			33.3%	45.5%	46.5%	41.0%	41.6%	44.6%
		missing data		12	4	4	1	21
				1.3%	.8%	1.0%	.9%	1.1%
		Over 3 to 4 hours		171	79	89	32	371
				19.0%	15.2%	21.2%	28.3%	19.0%
		Over 4 hours	2	137	80	66	19	304
			66.7%	15.2%	15.4%	15.7%	16.8%	15.5%
	Total		3	901	520	420	113	1957
			100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Produced Dec 20, 2000: Mediator Reports to Dec 20

A.4.1B: Toronto: Variables Related to costs: by Number of Defendants Named on Claim

City case filed			Number of Defendants Named					Total
			Not known	one	two	3 to 5	6 or more	
Toronto	Number of Mediation Sessions	1	2	867	492	397	104	1862
			66.7%	96.2%	94.6%	94.5%	92.0%	95.1%
		0		12	4	4	1	21
				1.3%	.8%	1.0%	.9%	1.1%
		2	1	21	21	13	7	63
			33.3%	2.3%	4.0%	3.1%	6.2%	3.2%
		3		1	2	4	1	8
				.1%	.4%	1.0%	.9%	.4%
		4				2		2
						.5%		.1%
		6			1			1
					.2%			.1%
	Summary Mediation Disposition	Neither Completely Settled nor specific issues settled		338	243	169	50	800
				37.5%	46.7%	40.2%	44.2%	40.9%
		Partially Settled: 'other' issue(s) - no statement issue(s)		64	27	38	7	136
				7.1%	5.2%	9.0%	6.2%	6.9%
		Partially Settled: issue(s) on Statement - no 'other(s)'	1	70	35	44	23	173
			33.3%	7.8%	6.7%	10.5%	20.4%	8.8%
		Partially Settled: issue(s) on Statement plus 'other(s)'		42	21	28	10	101
				4.7%	4.0%	6.7%	8.8%	5.2%
		Completely settled by end of Mediation	2	347	175	135	20	679
			66.7%	38.5%	33.7%	32.1%	17.7%	34.7%
		Completely settled within 7 days of mediation		40	19	6	3	68
				4.4%	3.7%	1.4%	2.7%	3.5%
	Mediation Duration: Day 1	0 to 2 hours		171	115	89	14	389
				19.0%	22.1%	21.2%	12.4%	19.9%
		Over 2 to 3 hours	1	410	242	172	47	872
			33.3%	45.5%	46.5%	41.0%	41.6%	44.6%
		0		12	4	4	1	21
				1.3%	.8%	1.0%	.9%	1.1%
		Over 3 to 4 hours		171	79	89	32	371
				19.0%	15.2%	21.2%	28.3%	19.0%
		Over 4 hours	2	137	80	66	19	304
			66.7%	15.2%	15.4%	15.7%	16.8%	15.5%
	Total		3	901	520	420	113	1957
			100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Produced Dec 20, 2000: Mediator Reports to Dec 20

A4.2: Mediation Settlement Outcome by Hours at 1st Session

City case filed		Mediation Duration: Day 1					Total
		0 to 2 hours	Over 2 to 3 hours	Duration Not Reported	Over 3 to 4 hours	Over 4 hours	
Ottawa	Neither Completely Settled nor specific issues settled	85	160	59	121	67	492
		51.8%	48.0%	46.8%	44.0%	31.5%	44.3%
	Partially Settled: 'other' issue(s) - no statement issue(s)	1	5	1	5	2	14
		.6%	1.5%	.8%	1.8%	.9%	1.3%
	Partially Settled: issue(s) on Statement - no 'other(s)'	34	32	9	20	13	108
		20.7%	9.6%	7.1%	7.3%	6.1%	9.7%
	Partially Settled: issue(s) on Statement plus 'other(s)'		4	2	4	2	12
			1.2%	1.6%	1.5%	.9%	1.1%
	Completely settled by end of Mediation	39	119	52	114	116	440
		23.8%	35.7%	41.3%	41.5%	54.5%	39.6%
	Completely settled within 7 days of mediation	5	13	3	11	13	45
		3.0%	3.9%	2.4%	4.0%	6.1%	4.1%
		164	333	126	275	213	1111
		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Toronto	Neither Completely Settled nor specific issues settled	240	388	7	110	55	800
		61.7%	44.5%	33.3%	29.6%	18.1%	40.9%
	Partially Settled: 'other' issue(s) - no statement issue(s)	30	71		21	14	136
		7.7%	8.1%		5.7%	4.6%	6.9%
	Partially Settled: issue(s) on Statement - no 'other(s)'	41	81	3	33	15	173
		10.5%	9.3%	14.3%	8.9%	4.9%	8.8%
	Partially Settled: issue(s) on Statement plus 'other(s)'	15	39		22	25	101
		3.9%	4.5%		5.9%	8.2%	5.2%
	Completely settled by end of Mediation	56	267	11	163	182	679
		14.4%	30.6%	52.4%	43.9%	59.9%	34.7%
	Completely settled within 7 days of mediation	7	26		22	13	68
		1.8%	3.0%		5.9%	4.3%	3.5%
		389	872	21	371	304	1957
		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Produced Dec 20, 2000: Mediator Reports to Dec 20

4.3A Ottawa: Mediator Responses: Fees and Time Spent : by Mediation Settlement Outcome (Q16i - Q16m

City case filed			Mediation Settlement: Summary?				
			result unknown	Case Not Settled - no issues settled	Partially Settled - some issues settled)	Case Completely Settled	Total
Ottawa	Cost of Initial Session	$0 to $500	22	38	1	24	85
			34.9%	24.8%	14.3%	14.1%	21.6%
		$501 to $1000	35	103	6	116	260
			55.6%	67.3%	85.7%	68.2%	66.2%
		$1001 to $1500	4	8		18	30
			6.3%	5.2%		10.6%	7.6%
		$1501 to $2000	1	2		7	10
			1.6%	1.3%		4.1%	2.5%
		$2001 to $2500		1		4	5
				.7%		2.4%	1.3%
		$2501 to $3000				1	1
						.6%	.3%
		$4001 to $6000	1				1
			1.6%				.3%
		Over $6000		1			1
				.7%			.3%
	Cost of all Subsequent sessions	$0 to $500	2	2			4
			66.7%	50.0%			50.0%
		$501 to $1000	1	2		1	4
			33.3%	50.0%		100.0%	50.0%
	Preparation Time Required	0 to 3 hours	49	139	6	144	338
			83.1%	90.3%	85.7%	85.7%	87.1%
		4 to 6 hours	7	12	1	16	36
			11.9%	7.8%	14.3%	9.5%	9.3%
		7 to 10 hours	2	2		8	12
			3.4%	1.3%		4.8%	3.1%
		Over 10 hours	1	1			2
			1.7%	.6%			.5%
	Total		59	154	7	168	388
			100.0%	100.0%	100.0%	100.0%	100.0%

Prepared Dec 22, 2000: based on Mediator Evaluation Forms to Dec 20, 2000

A4.3B Toronto: Mediator Responses: Fees and Time Spent : by Mediation Settlement Outcome (Q16i - Q16m)

City case filed			Mediation Settlement: Summary?				Total
			result unknown	Case Not Settled - no issues settled	Partially Settled - some issues settled)	Case Completely Settled	
Toronto	Cost of Initial Session	$0 to $500	13	34	12	19	78
			15.9%	11.7%	12.9%	6.9%	10.5%
		$501 to $1000	50	235	72	180	537
			61.0%	81.0%	77.4%	65.5%	72.6%
		$1001 to $1500	13	13	7	40	73
			15.9%	4.5%	7.5%	14.5%	9.9%
		$1501 to $2000	3	3	2	20	28
			3.7%	1.0%	2.2%	7.3%	3.8%
		$2001 to $2500	1	2		9	12
			1.2%	.7%		3.3%	1.6%
		$2501 to $3000	1	2		4	7
			1.2%	.7%		1.5%	.9%
		$4001 to $6000		1			1
				.3%			.1%
		Over $6000	1				1
			1.2%				.1%
		$3001 to $4000				3	3
						1.1%	.4%
	Cost of all Subsequent sessions	$0 to $500	1	4	2	2	9
			33.3%	33.3%	28.6%	13.3%	24.3%
		$501 to $1000		5	3	5	13
				41.7%	42.9%	33.3%	35.1%
		$1001 to $1500			1	2	3
					14.3%	13.3%	8.1%
		$1501 to $2000		1			1
				8.3%			2.7%
		$2001 to $2500				1	1
						6.7%	2.7%
		$2501 to $3000				1	1
						6.7%	2.7%
		$4001 to $6000				1	1
						6.7%	2.7%
		Over $6000	2	2	1	3	8
			66.7%	16.7%	14.3%	20.0%	21.6%
	Preparation Time Required	0 to 3 hours	62	231	70	237	600
			77.5%	82.5%	74.5%	86.2%	82.3%
		4 to 6 hours	9	32	19	31	91
			11.3%	11.4%	20.2%	11.3%	12.5%
		7 to 10 hours	6	10	3	5	24
			7.5%	3.6%	3.2%	1.8%	3.3%
		Over 10 hours	3	7	2	2	14
			3.8%	2.5%	2.1%	.7%	1.9%
	Total		80	280	94	275	729
			100.0%	100.0%	100.0%	100.0%	100.0%

Prepared Dec 22, 2000: based on Mediator Evaluation Forms to Dec 20, 2000

A4.4A Ottawa: Mediator Responses: Fees and Time Spent : by Selected/Assigned (Q16i - Q16m)

City case filed			Selected by Parties or Assigned by Coordinator			
			Unknown	Selected by Parties	Assigned by Coordinator	Total
Ottawa	Cost of Initial Session	$0 to $500		74	11	85
				23.0%	16.2%	21.6%
		$501 to $1000	3	202	55	260
			100.0%	62.7%	80.9%	66.2%
		$1001 to $1500		28	2	30
				8.7%	2.9%	7.6%
		$1501 to $2000		10		10
				3.1%		2.5%
		$2001 to $2500		5		5
				1.6%		1.3%
		$2501 to $3000		1		1
				.3%		.3%
		$4001 to $6000		1		1
				.3%		.3%
		Over $6000		1		1
				.3%		.3%
	Cost of all Subsequent sessions	$0 to $500		3	1	4
				50.0%	50.0%	50.0%
		$501 to $1000		3	1	4
				50.0%	50.0%	50.0%
	Preparation Time Required	0 to 3 hours	2	285	51	338
			100.0%	89.6%	75.0%	87.1%
		4 to 6 hours		26	10	36
				8.2%	14.7%	9.3%
		7 to 10 hours		6	6	12
				1.9%	8.8%	3.1%
		Over 10 hours		1	1	2
				.3%	1.5%	.5%
	Total		2	318	68	388
			100.0%	100.0%	100.0%	100.0%

Prepared Dec 22, 2000: based on Mediator Evaluation Forms to Dec 20, 2000

A4.4B Toronto: Mediator Responses: Fees and Time Spent : by Selected/Assigned (Q16i - Q16m)

City case filed			Selected by Parties or Assigned by Coordinator			Total
			Unknown	Selected by Parties	Assigned by Coordinator	
Toronto	Cost of Initial Session	$0 to $500		26	52	78
				7.0%	14.2%	10.5%
		$501 to $1000	1	243	293	537
			100.0%	65.3%	79.8%	72.6%
		$1001 to $1500		56	17	73
				15.1%	4.6%	9.9%
		$1501 to $2000		27	1	28
				7.3%	.3%	3.8%
		$2001 to $2500		10	2	12
				2.7%	.5%	1.6%
		$2501 to $3000		7		7
				1.9%		.9%
		$4001 to $6000		1		1
				.3%		.1%
		Over $6000			1	1
					.3%	.1%
		$3001 to $4000		2	1	3
				.5%	.3%	.4%
	Cost of all Subsequent sessions	$0 to $500		2	7	9
				11.8%	35.0%	24.3%
		$501 to $1000		3	10	13
				17.6%	50.0%	35.1%
		$1001 to $1500		3		3
				17.6%		8.1%
		$1501 to $2000		1		1
				5.9%		2.7%
		$2001 to $2500		1		1
				5.9%		2.7%
		$2501 to $3000		1		1
				5.9%		2.7%
		$4001 to $6000			1	1
					5.0%	2.7%
		Over $6000		6	2	8
				35.3%	10.0%	21.6%
	Preparation Time Required	0 to 3 hours	1	335	264	600
			100.0%	92.5%	72.1%	82.3%
		4 to 6 hours		20	71	91
				5.5%	19.4%	12.5%
		7 to 10 hours		5	19	24
				1.4%	5.2%	3.3%
		Over 10 hours		2	12	14
				.6%	3.3%	1.9%
	Total		1	362	366	729
			100.0%	100.0%	100.0%	100.0%

Prepared Dec 22, 2000: based on Mediator Evaluation Forms to Dec 20, 2000

Figure A4.6 Approximate Amount of Savings to Clients As Reported by Lawyers after Disposition of Case			
Amount of Savings	**Ottawa**	**Toronto**	**Total**
$0 to $500	1 (1%)	4 (2%)	5 (1%)
$501 to $1,000	3 (2%)	6 (3%)	9 (3%)
$1,001 to $1,500	5 (4%)	7 (3%)	12 (3%)
$1,501 to $2,000	6 (4%)	7 (3%)	13 (4%)
$2,001 to $3,000	8 (6%)	17 (8%)	25 (7%)
$3,001 to $4,000	11 (8%)	12 (6%)	23 (7%)
$4,001 to $5,000	17 (13%)	13 (6%)	30 (9%)
$5,001 to $6,000	14 (10%)	23 (11%)	37 (11%)
$6,001 to $7,000	3 (2%)	9 (4%)	12 (3%)
$7,001 to $8,000	3 (2%)	8 (4%)	11 (3%)
$8,001 to $9,000	4 (3%)	3 (1%)	7 (2%)
$9,001 to $10,000	10 (7%)	20 (10%)	30 (9%)
$10,001 to $15,000	14 (10%)	32 (16%)	46 (13%)
$15,001 to $20,000	20 (15%)	14 (7%)	34 (10%)
$20,001 to $30,000	8 (6%)	14 (7%)	22 (6%)
Over $30,000	9 (7%)	18 (9%)	27 (8%)
Total Responding	136 (76% of all surveys returned)	207 (69% of all surveys returned)	343 (72% of all surveys returned)
Surveys Returned	180	298	478

A5.1A Summary Result at Mediation: by Case Type by City

City case filed		Case Type (grouping 1)											Total	Total
		Remaining Case Types	Contract Commercial	Collection	Medical Malpractice	Motor Vehicle (incl. FL/CL)	Negligence	Other	Real Property	Trust & Fiduciary Duties	Wrongful Dismissal (incl. CWD and CVWD)	Simplified Rules		
Ottawa	Neither Completely Settled nor specific issues settled	14	122	44	8	55	28	56	7	10	46	102	492	
		51.9%	53.0%	46.8%	53.3%	43.3%	35.4%	47.9%	31.8%	52.6%	38.7%	38.9%	44.3%	
	Partially Settled: 'other' issue(s) - no statement issue(s)	1	3	2		1	1		1		2	3	14	
		3.7%	1.3%	2.1%		.8%	1.3%		4.5%		1.7%	1.1%	1.3%	
	Partially Settled: issue(s) on Statement - no 'other(s)'	5	22	15	1	15	6	8	2	5	6	23	108	
		18.5%	9.6%	16.0%	6.7%	11.8%	7.6%	6.8%	9.1%	26.3%	5.0%	8.8%	9.7%	
	Partially Settled: issue(s) on Statement plus 'other(s)'		1	1		1	1	5	1		1	1	12	
			.4%	1.1%		.8%	1.3%	4.3%	4.5%		.8%	.4%	1.1%	
	Completely settled by end of Mediation	7	67	29	6	52	41	42	10	4	53	129	440	
		25.9%	29.1%	30.9%	40.0%	40.9%	51.9%	35.9%	45.5%	21.1%	44.5%	49.2%	39.6%	
	Completely settled within 7 days of mediation		15	3		3	2	6	1		11	4	45	
			6.5%	3.2%		2.4%	2.5%	5.1%	4.5%		9.2%	1.5%	4.1%	
	Total	27	230	94	15	127	79	117	22	19	119	262	1111	
		100.0%	100.0%	100%	100.0%	100.0%	100%	100%	100%	100.0%	100.0%	100%	100.0%	
Toronto	Neither Completely Settled nor specific issues settled	9	148	65	23	209	107	126	18	21	74			800
		45.0%	43.5%	33.5%	62.2%	41.1%	45.0%	37.2%	45.0%	48.8%	37.4%			40.9%
	Partially Settled: 'other' issue(s) - no statement issue(s)	2	29	19	5	33	15	24	3		6			136
		10.0%	8.5%	9.8%	13.5%	6.5%	6.3%	7.1%	7.5%		3.0%			6.9%
	Partially Settled: issue(s) on Statement - no 'other(s)'	3	35	16	2	45	15	36	4	4	13			173
		15.0%	10.3%	8.2%	5.4%	8.9%	6.3%	10.6%	10.0%	9.3%	6.6%			8.8%
	Partially Settled: issue(s) on Statement plus 'other(s)'	1	17	14	1	25	8	18	3	2	12			101
		5.0%	5.0%	7.2%	2.7%	4.9%	3.4%	5.3%	7.5%	4.7%	6.1%			5.2%
	Completely settled by end of Mediation	5	105	66	5	170	86	130	12	15	85			679
		25.0%	30.9%	34.0%	13.5%	33.5%	36.1%	38.3%	30.0%	34.9%	42.9%			34.7%
	Completely settled within 7 days of mediation		6	14	1	26	7	5		1	8			68
			1.8%	7.2%	2.7%	5.1%	2.9%	1.5%		2.3%	4.0%			3.5%
	Total	20	340	194	37	508	238	339	40	43	198			1957
		100.0%	100.0%	100%	100.0%	100.0%	100%	100%	100%	100.0%	100.0%			100%

Produced Dec 20, 2000: Mediator Reports to Dec 20

A5.1B Summary Result at Mediation: by Case Type

	Case Type (grouping 1)											
	Contract Commercial	Collection	Medical Malpractice	Motor Vehicle (incl. FL/CL)	Negligence	Other	Real Property	Trust & Fiduciary Duties	Wrongful Dismissal (incl. CWD and CVWD)	Remaining Case Types	Simplified Rules	Total
Neither Completely Settled nor specific issues settled	270	109	31	264	135	182	25	31	120	25	102	1294
	47.4%	37.8%	59.6%	41.6%	42.6%	39.9%	40.3%	50.0%	37.9%	51.0%	38.9%	42.1%
Partially Settled: 'other' issue(s) - statement issue(s)	32	21	5	34	16	24	4		8	3	3	150
	5.6%	7.3%	9.6%	5.4%	5.0%	5.3%	6.5%		2.5%	6.1%	1.1%	4.9%
Partially Settled: issue(s) on Statement - no 'other(s)'	57	31	3	60	21	44	6	9	19	8	23	281
	10.0%	10.8%	5.8%	9.4%	6.6%	9.6%	9.7%	14.5%	6.0%	16.3%	8.8%	9.2%
Partially Settled: issue(s) on Statement plus 'other(s)'	18	15	1	26	9	23	4	2	13	1	1	113
	3.2%	5.2%	1.9%	4.1%	2.8%	5.0%	6.5%	3.2%	4.1%	2.0%	.4%	3.7%
Completely settled by end of Mediation	172	95	11	222	127	172	22	19	138	12	129	1119
	30.2%	33.0%	21.2%	35.0%	40.1%	37.7%	35.5%	30.6%	43.5%	24.5%	49.2%	36.4%
Completely settled within 7 days mediation	21	17	1	29	9	11	1	1	19		4	113
	3.7%	5.9%	1.9%	4.6%	2.8%	2.4%	1.6%	1.6%	6.0%		1.5%	3.7%
Total	570	288	52	635	317	456	62	62	317	49	262	3070
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100%

Produced Dec 20, 2000: Mediator Reports to Dec 20

A5.1c Summary (grouped) Result at Mediation: by Case Type:

City Mediation Held		Case Type (grouping 1)											Total	Total
		Remaining Case Types	Contract Commercial	Collection	Medical Malpractice	Motor Vehicle (incl. FL/CL)	Negligence	Other	Real Property	Trust & Fiduciary Duties	Wrongful Dismissal (Incl. CWD and CVWD)	Simplified Rules		
Ottawa	Not even partially settled	14	122	44	8	55	28	56	7	10	46	102	492	
		51.9%	53.0%	46.8%	53.3%	43.3%	35.4%	47.9%	31.8%	52.6%	38.7%	38.9%	44.3%	
	Settled some, but not all issues	6	26	18	1	17	8	13	4	5	9	27	134	
		22.2%	11.3%	19.1%	6.7%	13.4%	10.1%	11.1%	18.2%	26.3%	7.6%	10.3%	12.1%	
	Completely settled at or within 7 days of mediatio	7	82	32	6	55	43	48	11	4	64	133	485	
		25.9%	35.7%	34.0%	40.0%	43.3%	54.4%	41.0%	50.0%	21.1%	53.8%	50.8%	43.7%	
	Total	27	230	94	15	127	79	117	22	19	119	262	1111	
		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	
Toronto	Not even partially settled	9	148	65	23	209	107	126	18	21	74			800
		45.0%	43.5%	33.5%	62.2%	41.1%	45.0%	37.2%	45.0%	48.8%	37.4%			40.9%
	Settled some, but not all issues	6	81	49	8	103	38	78	10	6	31			410
		30.0%	23.8%	25.3%	21.6%	20.3%	16.0%	23.0%	25.0%	14.0%	15.7%			21.0%
	Completely settled at or within 7 days of mediatio	5	111	80	6	196	93	135	12	16	93			747
		25.0%	32.6%	41.2%	16.2%	38.6%	39.1%	39.8%	30.0%	37.2%	47.0%			38.2%
	Total	20	340	194	37	508	238	339	40	43	198			1957
		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%			100%

Produced Dec 26, 2000: Mediator Reports to Dec 20

A5.1D Whether or not Completely Settled at Mediation: by Case Type

City Mediation Held			Case Type (grouping 1)												
			Remaining Case Types	Contract Commercial	Collection	Medical Malpractice	Motor Vehicle (incl. FL/CL)	Negligence	Other	Real Property	Trust & Fiduciary Duties	Wrongful Dismissal (incl. CWD and CVWD)	Simplified Rules	Total	Total
Ottawa	Completely Settled at Mediation?	Not completely settled	20	148	62	9	72	36	69	11	15	55	129	626	
			74.1%	64.3%	66.0%	60.0%	56.7%	45.6%	59.0%	50.0%	78.9%	46.2%	49.2%	56.3%	
		Completely settled	7	82	32	6	55	43	48	11	4	64	133	485	
			25.9%	35.7%	34.0%	40.0%	43.3%	54.4%	41.0%	50.0%	21.1%	53.8%	50.8%	43.7%	
	Total		27	230	94	15	127	79	117	22	19	119	262	1111	
			100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	
Toronto	Completely Settled at Mediation?	Not completely settled	15	229	114	31	312	145	204	28	27	105			1210
			75.0%	67.4%	58.8%	83.8%	61.4%	60.9%	60.2%	70.0%	62.8%	53.0%			61.8%
		Completely settled	5	111	80	6	196	93	135	12	16	93			747
			25.0%	32.6%	41.2%	16.2%	38.6%	39.1%	39.8%	30.0%	37.2%	47.0%			38.2%
	Total		20	340	194	37	508	238	339	40	43	198			1957
			100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%			100.0%

Produced Dec 26, 2000: Mediator Reports to Dec 20

A5.2 Summary Result at Mediation: by Quarter of Mediation

City case filed		Quarter of 1st Mediation Session								Total
		1 Q 99	2 Q 99	3 Q 99	4 Q 99	1 Q 00	2 Q 00	3 Q 2000	4 Q 00	
Ottawa	Neither Completely Settled nor specific issues settled	2	32	64	99	87	96	63	48	491
		40.0%	45.1%	37.6%	48.1%	44.6%	47.3%	40.4%	46.2%	44.2%
	Partially Settled: 'other' issue(s) - no statement issue(s)			3	2	1	4	2	2	14
				1.8%	1.0%	.5%	2.0%	1.3%	1.9%	1.3%
	Partially Settled: issue(s) on Statement - no 'other(s)'	1	7	19	23	19	14	19	6	103
		20.0%	9.9%	11.2%	11.2%	9.7%	6.9%	12.2%	5.8%	9.7%
	Partially Settled: issue(s) on Statement plus 'other(s)'			2	5	2		1	2	12
				1.2%	2.4%	1.0%		.6%	1.9%	1.1%
	Completely settled by end of Mediation	2	30	78	66	77	80	66	41	440
		40.0%	42.3%	45.9%	32.0%	39.5%	39.4%	42.3%	39.4%	39.6%
	Completely settled within 7 days of mediation		2	4	11	9	9	5	5	45
			2.8%	2.4%	5.3%	4.6%	4.4%	3.2%	4.8%	4.1%
	Total	5	71	170	206	195	203	156	104	1110
		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Toronto	Neither Completely Settled nor specific issues settled	1	47	108	120	142	145	135	102	800
		25.0%	37.0%	45.2%	40.3%	40.7%	39.0%	46.9%	36.8%	40.9%
	Partially Settled: 'other' issue(s) - no statement issue(s)	1	5	15	27	19	29	19	20	135
		25.0%	3.9%	6.3%	9.1%	5.4%	7.8%	6.6%	7.2%	6.9%
	Partially Settled: issue(s) on Statement - no 'other(s)'		12	25	24	31	37	16	28	173
			9.4%	10.5%	8.1%	8.9%	9.9%	5.6%	10.1%	8.9%
	Partially Settled: issue(s) on Statement plus 'other(s)'	1	10	13	13	16	18	13	17	101
		25.0%	7.9%	5.4%	4.4%	4.6%	4.8%	4.5%	6.1%	5.2%
	Completely settled by end of Mediation	1	44	67	103	131	130	97	104	677
		25.0%	34.6%	28.0%	34.6%	37.5%	34.9%	33.7%	37.5%	34.6%
	Completely settled within 7 days of mediation		9	11	11	10	13	8	6	68
			7.1%	4.6%	3.7%	2.9%	3.5%	2.8%	2.2%	3.5%
	Total	4	127	239	298	349	372	288	277	1954
		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Produced Dec 20, 2000: Mediator Reports to Dec 20

A5.3 Summary Result at Mediation: by Number of Defendants Named

City case filed		Number of Defendants Named					
		Not Known	one	two	3 to 5	6 or more	Total
Ottawa	Neither Completely Settled nor specific issues settled	2	263	131	85	11	492
		40.0%	43.4%	49.1%	42.3%	34.4%	44.3%
	Partially Settled: 'other' issue(s) - no statement issue(s)		9	1	1	3	14
			1.5%	.4%	.5%	9.4%	1.3%
	Partially Settled: issue(s) on Statement - no 'other(s)'		55	26	22	5	108
			9.1%	9.7%	10.9%	15.6%	9.7%
	Partially Settled: issue(s) on Statement plus 'other(s)'		7	3	2		12
			1.2%	1.1%	1.0%		1.1%
	Completely settled by end of Mediation	3	242	96	86	13	440
		60.0%	39.9%	36.0%	42.8%	40.6%	39.6%
	Completely settled within 7 days of mediation		30	10	5		45
			5.0%	3.7%	2.5%		4.1%
	Total	5	606	267	201	32	1111
		100%	100%	100.0%	100.0%	100.0%	100.0%
Toronto	Neither Completely Settled nor specific issues settled		338	243	169	50	800
			37.5%	46.7%	40.2%	44.2%	40.9%
	Partially Settled: 'other' issue(s) - no statement issue(s)		64	27	38	7	136
			7.1%	5.2%	9.0%	6.2%	6.9%
	Partially Settled: issue(s) on Statement - no 'other(s)'	1	70	35	44	23	173
		33.3%	7.8%	6.7%	10.5%	20.4%	8.8%
	Partially Settled: issue(s) on Statement plus 'other(s)'		42	21	28	10	101
			4.7%	4.0%	6.7%	8.8%	5.2%
	Completely settled by end of Mediation	2	347	175	135	20	679
		66.7%	38.5%	33.7%	32.1%	17.7%	34.7%
	Completely settled within 7 days of mediation		40	19	6	3	68
			4.4%	3.7%	1.4%	2.7%	3.5%
	Total	3	901	520	420	113	1957
		100%	100%	100.0%	100.0%	100.0%	100.0%

Produced Dec 20, 2000: Mediator Reports to Dec 20

Figure A6.1

Mediators by Number of Rule 24.1 Mediations in Ottawa (Mediators with at least one Rule 24.1 Mediation)

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1	30	30.9	30.9	30.9
	2	19	19.6	19.6	50.5
	3	13	13.4	13.4	63.9
	4	10	10.3	10.3	74.2
	5	3	3.1	3.1	77.3
	6	5	5.2	5.2	82.5
	12	1	1.0	1.0	83.5
	13	1	1.0	1.0	84.5
	15	2	2.1	2.1	86.6
	16	1	1.0	1.0	87.6
	18	1	1.0	1.0	88.7
	20	1	1.0	1.0	89.7
	21	1	1.0	1.0	90.7
	22	1	1.0	1.0	91.8
	30	1	1.0	1.0	92.8
	44	1	1.0	1.0	93.8
	66	1	1.0	1.0	94.8
	69	1	1.0	1.0	95.9
	78	1	1.0	1.0	96.9
	112	1	1.0	1.0	97.9
	173	1	1.0	1.0	99.0
	186	1	1.0	1.0	100.0
	Total	97	100.0	100.0	

Figure A6.2

Mediators by Number of Rule 24.1 Mediations Completed in Toronto
(Mediators with at least one Rule 24.1 Mediation in Toronto)

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1	28	10.4	10.4	10.4
	2	43	15.9	15.9	26.3
	3	46	17.0	17.0	43.3
	4	45	16.7	16.7	60.0
	5	28	10.4	10.4	70.4
	6	19	7.0	7.0	77.4
	7	13	4.8	4.8	82.2
	8	14	5.2	5.2	87.4
	9	9	3.3	3.3	90.7
	10	2	.7	.7	91.5
	13	1	.4	.4	91.9
	14	1	.4	.4	92.2
	15	2	.7	.7	93.0
	16	2	.7	.7	93.7
	17	1	.4	.4	94.1
	19	1	.4	.4	94.4
	23	1	.4	.4	94.8
	25	1	.4	.4	95.2
	26	1	.4	.4	95.6
	29	1	.4	.4	95.9
	32	1	.4	.4	96.3
	33	1	.4	.4	96.7
	36	1	.4	.4	97.0
	39	1	.4	.4	97.4
	49	1	.4	.4	97.8
	53	1	.4	.4	98.1
	58	1	.4	.4	98.5
	70	1	.4	.4	98.9
	72	1	.4	.4	99.3
	77	1	.4	.4	99.6
	141	1	.4	.4	100.0
	Total	270	100.0	100.0	

A6.3 Mediators: By Number of Rule 24.1 Mandatory Mediations in Both Cities

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1	35	1.1	1.1	1.1
	2	76	2.5	2.5	3.6
	3	123	4.0	4.0	7.6
	4	196	6.4	6.4	14.0
	5	155	5.0	5.0	19.1
	6	138	4.5	4.5	23.6
	7	126	4.1	4.1	27.7
	8	112	3.6	3.6	31.3
	9	99	3.2	3.2	34.5
	10	30	1.0	1.0	35.5
	11	44	1.4	1.4	36.9
	12	24	.8	.8	37.7
	13	13	.4	.4	38.1
	14	28	.9	.9	39.1
	15	45	1.5	1.5	40.5
	16	64	2.1	2.1	42.6
	17	34	1.1	1.1	43.7
	18	18	.6	.6	44.3
	19	19	.6	.6	44.9
	21	21	.7	.7	45.6
	22	22	.7	.7	46.3
	23	23	.7	.7	47.1
	25	25	.8	.8	47.9
	26	52	1.7	1.7	49.6
	29	29	.9	.9	50.5
	30	30	1.0	1.0	51.5
	32	32	1.0	1.0	52.5
	35	35	1.1	1.1	53.7
	36	36	1.2	1.2	54.9
	39	39	1.3	1.3	56.1
	44	44	1.4	1.4	57.6
	49	49	1.6	1.6	59.2
	53	53	1.7	1.7	60.9
	62	62	2.0	2.0	62.9
	66	66	2.1	2.1	65.0
	69	69	2.2	2.2	67.3
	70	70	2.3	2.3	69.6
	72	72	2.3	2.3	71.9
	77	77	2.5	2.5	74.4
	83	83	2.7	2.7	77.1
	112	112	3.6	3.6	80.8
	142	142	4.6	4.6	85.4
	173	173	5.6	5.6	91.0
	186	186	6.1	6.1	97.1
	Non-Roster	89	2.9	2.9	100.0
	Total	3070	100.0	100.0	

Appendix B: Methodology

Chapter 1: Introduction

The design of the evaluation recognized that many of the issues to be addressed were very complex, and looking at them from a specific perspective using a single source of information might yield ambiguous or biased results. Thus the design assumed that confidence in the evaluation would be higher if findings, conclusions and recommendations were based on information collected from as many perspectives and from as many sources of information as possible.

The evaluation therefore spent considerable energy and resources collecting data from a variety of sources, including:

- Empirical data from ongoing Ministry automated court information systems (in particular, Sustain and the Local Mediation Coordinator's Access database files)
- Data from a number of specially designed reports and evaluation questionnaires to mediators, lawyers and litigants involved in individual mediations
- Workshops and focus groups
- A special questionnaire to Toronto lawyers in a control group of cases commenced prior to the introduction of Rule 24.1
- Other interviews with and questionnaires from those involved in various aspects of the mediation process.

Chapter Two of this Appendix describes each of these data sources in more detail.

The remaining chapters then provide methodological information and more detailed statistical information to support the analysis in certain chapters in the main body of this report.

Chapter 2: Different Sources of Data Used by the Evaluation

2.1 Ongoing Court Information Systems

The information systems maintained by the Ministry of the Attorney General (e.g. Sustain) were designed primarily to support the day-to-day operations of the courts, in particular by making data available on characteristics of, and events and decisions related to, individual cases. These systems therefore contained much raw data of potential value to the evaluation -- on cases before the courts both prior to and after the introduction of Rule 24.1. However, in nearly all instances it was extremely difficult and time consuming to extract from the systems many of the types of statistics and reports needed for the evaluation -- especially statistics comparing different groups of cases or cases in different time periods.

Considerable work was undertaken especially for this project by the Ministry in partnership with the evaluation team. Significant progress was made in extracting from existing management information systems a "micro-file" of key data. This *micro-file* was in a form (i.e. dbf file) that could be read by statistical programs written by the evaluators (in SPSS[1]) to produce the statistical reports they required. The creation of the micro-file greatly enhanced the statistical reporting capability of the Ministry's automated court information system – both for this evaluation and for other court planning and management functions.

This micro-file contained data on over 100 data elements for each of the cases that have been commenced and/or defended since 1997, both before and after the introduction of the mandatory mediation program on January 4, 1999.

Those data elements include, for instance:

- Basic case characteristics (e.g. case type, city of filing, number of defendants named on the claim, size of claim, lawyers' names and contact information)
- Court process information (e.g. dates and results of commencement, defence, pre-trial conferences, motions, trials, final dispositions), and
- Characteristics of and activities related to mediation (e.g. when and whether a mediator is selected or assigned; whether various mediation-related motions are filed [i.e. motions to exempt, to postpone or to extend]; whether Certificates of Non-Compliance are issued).

Each month during most of the evaluation, the Ministry provided the evaluators with a copy of the micro-file with information current to the end of the previous month. The

[1] SPSS: Statistical Package for the Social Sciences.

information in this final report is based on a version of the micro-file with Sustain data current to November 30, 2000 – roughly 23 months after the start of the mandatory mediation program.

Certain of the statistical reports presented in this report are based solely on data provided in the micro-files (e.g. number of cases commenced by quarter by type of case, time intervals from first defence to final disposition, defence rates). However, the micro-file data were most useful when they were linked (using the common case numbers) to other data on the same cases collected through questionnaires and reports designed and implemented especially for the evaluation. For instance, this "linking" allowed us to investigate whether settlement rates at mediation varied by case type (i.e. by linking data on settlement outcomes from the Mediator's Report to case type data from the micro-file).

2.2 Reports and Evaluation Questionnaires/Forms

2.2.1 Questionnaires on Mediated Cases

Another key source of information was the specially-designed mediation reports and evaluation questionnaires (referred to as "evaluation forms") that were distributed to mediators, lawyers and litigants in a sample of cases[2] mediated in both Toronto and Ottawa. These mediation reports and forms constitute an extremely valuable resource for identifying different participants' views regarding a broad range of issues related to all four areas addressed by the evaluation (i.e. timing, costs, outcomes and supporting processes).

Two special forms were filled out by mediators:

- The Mediator's Report (which mediators are required by Rule 24.1 to file with the Ministry in all mediated cases), and
- The Mediator's Evaluation Form (additional evaluative data on some 42 specific issues -- sent directly to the evaluators by mediators in a sample of mediations).

Copies of both of these forms are provided in Appendix C to this report.

In addition, all lawyers and litigants in a case were also asked to fill in a two-part form (the "Lawyer's [or] Litigant's Evaluation Form") for each case in the same sample of cases in which a mediation occurred.

- Part A of those questionnaires was to be filled out and directly sent to the evaluators within 10 days of the mediation.
- Part B was to be sent directly to the evaluators within 10 days of the final disposition of the same cases.

The current report provides extensive analysis of the responses to over 30 specific questions related to the mediation contained in Parts A and B of these questionnaires. Copies of both are included in Appendix C.

---

[2] Procedures for selecting the sample are described later in this Appendix.

This report uses data from the Mediator's Reports and the Evaluation Forms (Mediator's, Lawyer's and Litigant's) received by December 20, 2000.

2.2.2 Designing the Evaluation Forms

First, drafts of each of the evaluation forms were produced by the evaluation team after extensive review of the evaluation and program literature in the area.

The evaluation team then conducted a major consultation process, starting in the Fall of 1998 and continuing to February 1999 to review those initial designs -- and to obtain the support from the mediator and lawyer community generally, and more particularly from those mediators and lawyers who would eventually be asked to complete the forms. These consultations involved both groups and were held in both Toronto and Ottawa.

Two important observations should be made about the consultation. First, the evaluation team underestimated the challenges of designing a questionnaire that would receive the support of mediators, lawyers, the evaluation steering committee and the evaluators. Second, the efforts to engage the key stakeholders in the process clearly resulted in major improvements to both the questionnaires and the processes for distributing, completing and collecting them.

The consultation was well worth the effort – both in ensuring the quality of the questionnaires and a high rate of return for those questionnaires. As well, the care taken by the many mediators, lawyers and litigants who submitted forms to provide complete and carefully considered responses has resulted in a very valuable database of information. This information has been critical to formulating the findings and conclusions of this report.

2.2.3 Procedure for Selecting the Sample of Mediated Cases

To reduce the workload on those who would be filling out the questionnaires, and because valid statistical results could be obtained with lower numbers of cases, it was decided to ask mediators, litigants and lawyers to fill out forms for only a sample of cases.

Sampling procedures were defined after special analysis of the volume and distribution by case type of historical caseloads in both Ottawa and Toronto. Because of differences found (in particular, because Ottawa mandatory mediation covered Simplified Rules cases and other cases not covered in Toronto), different sampling rules (i.e. percentages of cases sampled, and the definition of the types of cases sampled) were used for Ottawa and Toronto.

The procedures chosen took the following principles and calculations into consideration:

1. It is important to be able to test whether mandatory mediation has different results for different case types.

2. It is important to see whether the results of mandatory mediation change from year one to year two of the pilot.
3. The evaluation would need about 100 defended cases of each case type per year to allow this type of analysis.
4. Some slippage was expected because a certain percentage of mediators, litigants and lawyers in the sample would not hand in forms. This percentage was expected to be below 10% for mediators, but around 33% for lawyers and litigants. This latter estimate was recognized as being very optimistic and achieving it would require a major outreach program on the part of the project's Evaluation Committee. If that outreach program were less successful, we would have to sample a higher percent of cases or scale back the types of analysis to be undertaken.
5. Based on these assumptions, to get 100 defended cases per year with valid and complete data, it was necessary to include 150 cases of each type in the sample. This was equivalent to 37.5 cases per quarter (i.e. the length of the three month test that was done of the evaluation forms and procedures).
6. To ensure that the results from the sample could be generalized to cases not sampled, the process for selecting the cases had to be random.

The sampling procedures in Figure B2.1 were used in Toronto to select a random sample of mediated cases. The case categories are the preexisting categories used by Sustain and identified by the party initiating the claim.

Figure B2.1

CVCC- contract commercial	1 in 2 (i.e. every second one)
CVCOL-collection	2 in 3 (i.e. exclude every 3rd one
CVMM-medical malpractice	1 in 1
CVMV- motor vehicle	1 in 3 (i.e. every third one)
CVN- negligence	2 in 3 (i.e. exclude every 3rd one
CVO- other	1 in 2
CVOPM – other professional malpractice	1 in 1 (i.e. all cases)
CVRP-real property	1 in 1 (i.e. all cases)
CVTFD- trust and fiduciary duties	1 in 1 (i.e. all cases)
CWD- wrongful dismissal	1 in 1

Overall, the expectation was that the sample would consist of roughly half of the cases in Toronto.

Soon after the first defence was recorded in a case, Toronto court staff applied the above procedures to designate whether or not that case would be included in the sample of mediated cases. The procedures were applied to all Rule 24.1 cases defended between May 1999 and October 2001.[3]

[3] Since it was decided that the evaluation would not require evaluation forms to be filled out for cases mediated after November 30, 2000 and since for a majority of cases the time interval between the first defence and the mediation would be at least 60 days, court staff stopped selecting cases for the mediation sample in October.

The procedures developed for selecting a random sample with quotas for different case types in Ottawa are summarized in Figure B2.2. Overall, one would expect that the Ottawa sample would also make up about half of the cases defended.

Figure B2.2

Case Type	Ottawa Sampling Rule
CVAO – application Other	1 in 1 (all)
CVBT – breach of trust	1 in 1 (all)
CVBS – bulk sales	1 in 1 (all)
CVCL – construction lien	1 in 1 (all)
CVCC - contract commercial	1 in 3
CVCOL-collection	1 in 2
CVES – employment standards	1 in 1 (all)
CVE – estates	1 in 1 (all)
CVIA – intended action	1 in 1 (all)
CVLT – landlord & tenant	1 in 1 (all)
CVMM - medical malpractice	1 in 1 (all)
CVMV - motor vehicle	1 in 2
CVMVFC -	1 in 1 (all)
CVN- negligence	1 in 1 (all)
CVO- other	1 in 2
CVOPM – other professional malpractice	1 in 1 (all)
CVRP-real property	1 in 1 (all)
CVSA -	1 in 1 (all)
CVTFD- trust and fiduciary duties	1 in 1 (all)
CWD- wrongful dismissal	1 in 1 (all)

After the sample selection began in both Toronto and Ottawa, it was discovered that, although both Ottawa and Toronto applied the sampling procedures given them, Ottawa applied the procedures later in the litigation process. As noted before, Toronto designated the case as being or not being in the sample soon after the filing of the first defence. A certain proportion of those sampled cases would then be expected to be disposed between being designated for the sample and the occurrence of the mediation. Evaluation forms would obviously not be forthcoming from these sampled but disposed cases.

In Ottawa, the procedure was instead to wait until approximately a week before the scheduled mediation before designating the case as being or not being in the sample. Since more time would have elapsed between the first defence and the date at which the sample status was designated in Ottawa, it was more likely that any case would have already been disposed before the "sample designation date". Those disposed cases would not be part of the pool of cases from which the sample would be drawn. The result was twofold. First, the number of cases designated for the Ottawa sample represented a smaller proportion of all defended cases (i.e. compared to Toronto). Second, a higher percentage of the sampled cases in Ottawa would lead to mediations – and to evaluation forms submitted to the evaluation.

The evaluators discovered that Ottawa and Toronto were using different sampling approaches after the sampling had begun. However, on balance it was expected that the

lower sampling rate in Ottawa would be offset by the higher percent of sampled cases going to mediation in Ottawa – making eventual net differences between the two cities (in terms of the percentage of defended cases submitting evaluation forms) negligible, and certainly not large enough to affect the comparability of the findings.

One test of how well the sampling designation procedures were implemented is shown in Figure B2.3, which examines – separately for different types of cases – the numbers of cases actually sampled for cases defended from May , 1999 through October 30, 2000.

The analysis should take into consideration the fact that the sampling rates decreased significantly (if not completely) in October and November, 2000. Analysis of the statistics in Figure B2.3 must also be done within the context of the different procedures in Ottawa and Toronto for sampling cases.

Figure B2.3

Selection of Samples of Mediations in Toronto and Ottawa

	Ottawa			Toronto		
	Defended Cases	Sampled Cases		Defended Cases	Sampled Cases	
		#	%		#	%
Contract Commercial	536	84	16%	607	241	40%
Collection	219	54	25%	367	181	49%
Medical Malpractice	62	16	26%	109	86	79%
Motor Vehicle	392	88	22%	953	261	27%
Negligence	247	94	38%	435	216	50%
Other	318	70	22%	609	258	42%
Real Property	65	22	34%	80	67	84%
Trust & Fiduciary Duties	42	20	48%	67	55	82%
Wrongful Dismissal	190	93	49%	279	230	82%
Remaining Case Types	55	11	20%	33	23	70%
Simplified Rule	563	152	27%			
Total	2689	704	26%	3539	1618	46%

For Toronto, the question is "are the percentages shown under the column 'sampled cases' consistent with the sampling procedures shown in Figure B2.1?" The simple answer is "yes". For instance, the sampling procedure dictated that Toronto sample one in every two contract/commercial cases. In fact, 40% of the contract/commercial cases were selected for the sample. Given the fact that sampling rates fell off during the last two months, this percentage is within an acceptable range. A similar assessment applies to every case type. In addition, the overall percentage of 46% (1618 cases sampled out of 3539 defended cases) compares very favourably to the expected 50% rough estimate noted earlier.

A more important observation is that in Toronto -- for case types in which the volume made achievement of such a target possible -- the target of selecting for the sample over 150 cases for each case type was exceeded for all case types.

Figure B2.3 shows, for Ottawa, the percent of all defended cases that were designated as part of the sample. However, the relevant question is "are the percentages shown under the column 'sampled cases' consistent with the sampling procedures shown in Figure B2.2 – given that cases were selected only from those that were not disposed and were scheduled for mediation at time of designation for the sample?" More specifically, one has to consider the statistics in the 'sampled cases' column as a percent of the total cases column less the number of cases disposed prior to designation for the sample.

Data on the number of cases disposed prior to sampling (not shown here) allow the production of the following estimates:

- 31% sampled for contract commercial (target = 33%)
- 46% for collections (target = 50%)
- 39% for medical malpractice (target = 100%)
- 34% for motor vehicle (target = 50%)
- 60% for negligence (target = 100%)
- 37% for other (target = 50%)
- 59% for real property (target = 100%)
- 52% for trust and fiduciary duties (target = 100%)
- 87% for wrongful dismissal (target = 100%)
- (targets were not specified for Simplified Rule cases).

The percentages of cases are within an acceptable range of the original targets for contract commercial, collections and wrongful dismissal cases. However, the percentages are considerably below the original targets for the other case types shown.

In addition, the under-sampling has produced a sample smaller (704) than expected in Ottawa. However, it should be noted that although the original sampling percentages were chosen to obtain a sample size sufficient to generate about 150 completed mediations per case type, those percentages were chosen on the assumption that they would be applied to the total number of cases defended. In Ottawa, the percentages were in fact applied to only those cases that were not already disposed at the time the sample was chosen. As noted earlier, it was expected that these remaining cases would be far more likely to go to mediation and perhaps a lower sampling percentage would generate the number of mediations desired in the sample.

Whether or not expectations were realized will be addressed in the next section within the context of the numbers of responses actually received from participants in the sampled mediations in Ottawa and Toronto.

2.2.4 Response Rates

Overall, mediators provided information on individual mediations through over 3200 Mediator's Reports, which were forwarded to the court in accordance with a requirement

of Rule 24.1. In addition, mediators, lawyers and litigants provided more detailed and confidential information by completing and forwarding over 3,810 evaluation forms directly to the evaluators.

2.2.4.1 Mediator's Reports

Figure B2.4 is based on 3210 mediations in which mediators returned completed Mediator's Reports to the Local Mediation Coordinator between the introduction of the rule on January 4, 1999 and December 20, 2000. The court staff entered the data provided on these reports into an Access database and forwarded copies of this database to the evaluators each month. Just under a third of the 3210 mediations occurred in Ottawa, just over two-thirds in Toronto. The number of Mediator's Reports filed is the best estimate available to the evaluation of the number of mandatory mediations that occurred.[4]

For Toronto, the 1621 cases designated by court staff as being in the sample of mediations[5] represented roughly 46% of the Rule 24.1 cases commenced and defended prior to November 30, 2000. However, as shown in Figure B2.4, the 1621 cases sampled represent a much higher proportion (79.4%) of the cases that actually resulted in a mandatory mediation. The difference is due to two factors:

- the number of cases disposed before a mediation (*either before or after* being designated for the sample), and
- the number of cases that have been selected for the sample but for whom sufficient time has not elapsed to actually conduct the mediation.

For Ottawa, the 704 cases designated by court staff as being in the sample of mediations represented roughly 26% of the Rule 24.1 cases commenced and defended prior to November 30, 2000. However, as shown in Figure B2.4, the 704 cases sampled represent a higher proportion (60.3%) of the cases that actually resulted in a mandatory mediation. The difference is also due to two factors:

- the number of cases disposed *after* being designated for the sample and before a mediation, and
- the number of cases that have been selected for the sample but for whom sufficient time has not elapsed to actually conduct the mediation.

An important observation is that in Ottawa the cases selected for the sample represent a smaller percent (60%) of the number of mediations actually held than in Toronto (79%). It had been hypothesized that the lower sampling rate used to select cases for the sample in Ottawa (applied closer to the mediation date) would be offset by the higher likelihood of those cases proceeding to a mediation (than if they had been selected earlier).

---

[4] The evaluators understand from court staff that a very low percentage of completed mediations have not resulted in the submission of a Mediator's Report.

[5] As noted in the body of the report, due to differences in data quality for certain variables there will be minor variations in the absolute numbers of cases from one figure to another.

Figure B2.4

Response Rate for Evaluation Forms

(as of December 20, 1999 for Mediator Reports and January 6, 2001 for other Forms)

	Ottawa	Toronto	City Unknown	Total
Mediations Completed				
Mediator Reports	1168	2042		3210
Sampled Cases	704	1621		2325
As percent of mediations completed	60%	79.4%		72.4%
N.B. Toronto is Estimated				
Forms from Sample of Mediations				
Mediator Evaluation Forms	411	822	10	1243
As % of Mediator Reports	35%	40%		39%
As % of Sampled Cases	58%	51%		53%
Lawyer A Evaluation Forms	358	756	16	1130
As % of Mediator Reports	31%	37%		35%
As % of Mediator Evaluation Forms	87%	92%		91%
Cases Generating Lawyer A Evaluation Forms	253	529	1	783
As % of Mediator Reports	22%	26%		24%
As % of Mediator Evaluation Forms	62%	64%		63%
Lawyer A forms per Lawyer A Case	1.42	1.43	16.00	1.44
Lawyer B Evaluation Forms	187	311	11	509
As % of Mediator Reports	16%	15%		16%
As % of Mediator Evaluation Forms	45%	38%		41%
Cases Generating Lawyer B Evaluation Forms	139	222	1	362
As % of Mediator Reports	12%	11%		11%
As % of Mediator Evaluation Forms	34%	27%		29%
Lawyer B forms per Lawyer B Case	1.35	1.40	11.00	1.41
Litigant A Evaluation Forms	181	401	18	600
As % of Mediator Reports	15%	20%		19%
as % of Mediator Evaluation Forms	44%	49%		48%
Cases Generating Litigant A Evaluation Forms	152	313	1	466
as % of Mediator Reports	13%	15%		15%
as % of Mediator Evaluation Forms	37%	38%		37%
Litigant A forms per Litigant A Case	1.19	1.28	18.00	1.29
Litigant B Evaluation Forms	115	204	9	328
as % of Mediator Reports	10%	10%		10%
as % of Mediator Evaluation Forms	28%	25%		26%
Cases Generating Litigant B Evaluation Forms	94	161	1	256
as % of Mediator Reports	8%	8%		8%
as % of Mediator Evaluation Forms	23%	20%		21%
Litigant B forms per Litigant B Case	1.22	1.27	9.00	1.28

This hypothesis is not borne out. The application of the Ottawa sampling rules resulted in a lower percentage of actual mediations being sampled than in Toronto.

2.2.4.2 Mediator Evaluation Forms

Figure B2.4 shows that the evaluation received Mediator Evaluation Forms from mediators in 1243 of the sampled and completed mediations.[6] Forms were received for 411 Ottawa mediations -- and for exactly twice as many Toronto mediations.

It seems reasonable to assume that equal percentages of those selected for the sample and those not selected for the sample would have been disposed prior to mediation. One would therefore assume that roughly half of the completed mediations should fall into our sample. For Toronto, the 822 Mediation Evaluation forms account for 40% of the 2042 Mediation Reports received by the court (i.e. 40% of our best estimate of the number of completed mediations).[7] We can therefore conclude that we received Mediator Evaluation Forms in the vast majority of completed Toronto mediations in our sample (i.e. 80% would be a conservative estimate).

For Ottawa cases, the number of Mediator's Evaluation Forms we received represented a smaller percent (35%) of the mediations completed. This is consistent with the earlier finding that cases were not designated for inclusion in the sample at as high a rate as in Toronto. It still seems reasonable to assume that the evaluation received Mediation Evaluation Forms from a high proportion of mediators in sampled cases (i.e. in the order of 70% or above).

These percents are certainly sufficient to assume that the samples are representative of the total population of mediations – and therefore that results from the samples can be generalized to that population.

2.2.4.3 Lawyer Evaluation Forms

Figure B2.4 also shows that the response rates from lawyers in both Ottawa and Toronto were also very high – even before considering the complex and time consuming nature of the questionnaire. Lawyers contributed 1,130 Lawyer's Evaluations (Part A) -- nearly as many as the number of Mediator Evaluation Forms received from mediators.[8]

---

[6] Under the terms of their being accepted to the roster of mediators, mediators agreed to support the evaluation of the program. By far the majority of mediators interpreted this commitment as requiring them to complete the Mediator's Evaluation Form.

[7] Percentages based on the number of sampled cases are problematic since mediations occur at varying times after defence and there may be a substantial proportion of sampled cases that will still result in a mediation after the time the data were available (i.e. November 30, 2000).

[8] Lawyers submitted nearly one Evaluation Form for each Mediator Evaluation Form received (.97 for Toronto and .89 for Ottawa). Even given the fact that each mediation case usually involves two or more lawyers, these response rates seem more than reasonable for voluntary and fairly time-consuming surveys of this type.

It is important to know if high numbers of responses are due to one or two participants in a high number of cases returning forms – or whether high return rates are caused by a very high number of participants in a small number of cases returning forms.

The return rates per mediation are even more impressive – with forms from at least one lawyer received in 63% of the mediations. The response rate per mediation (for which we received a Mediator Evaluation Form) was virtually identical in Ottawa (62%) and Toronto (64%). The average number of lawyers providing a response for each case was 1.42 in Ottawa and 1.43 in Toronto.

The response rates for the Lawyer Part B Evaluation Form are also quite reasonable – especially when one considers that Part B was to be submitted only when the case was finally disposed. 34% of Ottawa mediations (for which we received a Mediator Evaluation Form) generated a response from at least one lawyer (1.35 on average). Slightly lower, but similar, results were achieved in Toronto -- with 27% of Toronto mediations (for which we received a Mediator Evaluation Form) generating a response from at least one lawyer (1.40 on average).

These rates are certainly indicative of a marked willingness on the part of members of the bar to contribute to the evaluation.

2.2.4.4 Litigant Evaluation Forms

As would be expected, litigant response rates were below those for lawyers and mediators. However, although litigant response rates were roughly half those for lawyers, the rates were still higher than one would expect for a questionnaire of this complexity and length. 37% of mediations (for which we received a Mediator's Evaluation Form) in Ottawa and 38% of mediations in Toronto generated a Litigant Evaluation Form. In total, litigants contributed 600 Litigant Part A Evaluation Forms and 328 Litigant Part B Forms.

2.3 Responses by Case Type

As previously stated, one of the objectives of the procedural rules developed to govern the sampling was the achievement of a sample size of roughly 100 mediations for each of the major case types.

Figure B2.5 demonstrates that this objective was reached in Toronto with respect to both Mediator Evaluation Forms and Lawyer Evaluation Forms. Only for collections cases

Figure B2.5

Numbers of Evaluation Forms Received By Case Type*

	Mediator Reports	Mediator Evaluation Forms		Lawyer Evaluation Forms: Part A		Litigant Evaluation Forms: Part A	
		#	as % of Mediator Reports	#	as % of Mediator Evaluation Forms	#	as % of Mediator Evaluation Forms
Ottawa							
Contract Commercial	230	60	26%	46	77%	19	32%
Collection	94	30	32%	25	83%	19	63%
Medical Malpractice	15	9	60%	7	78%	6	67%
Motor Vehicle	127	43	34%	23	53%	12	28%
Negligence	79	49	62%	42	86%	29	59%
Other	117	40	34%	20	50%	16	40%
Real Property	22	8	36%	11	138%	4	50%
Trust & Fiduciary	19	11	58%	9	82%	4	36%
Wrongful Dismissal	119	71	60%	67	94%	35	49%
Remaining Case Types	27	4	15%				
Simplified Rules	262	88	34%	69	78%	34	39%
Total	1111	413	37%	319	77%	178	43%
Toronto							
Contract Commercial	340	121	36%	118	98%	67	55%
Collection	194	85	44%	70	82%	38	45%
Medical Malpractice	37	23	62%	10	43%	2	9%
Motor Vehicle	508	124	24%	107	86%	47	38%
Negligence	238	111	47%	104	94%	53	48%
Other	339	127	37%	121	95%	59	46%
Real Property	40	25	63%	29	116%	12	48%
Trust & Fiduciary	43	25	58%	29	116%	22	88%
Wrongful Dismissal	198	145	73%	113	78%	67	46%
Remaining Case Types	20	13	65%	11	85%	7	54%
Simplified Rules							
Total	1957	799	41%	712	89%	374	47%

* N.B. Only includes forms with matching Sustain record (for case type) and valid city and case type data.

did our sampling procedural rules yield a sample of less than 100 – although responses of 85 and 70 are reasonably close to the target.[9] The numbers for litigants is lower, but even there, the sample sizes will allow limited types of analysis for certain case types.

[9] For certain case types, the number of mediations in total was too small to allow our target to be reached. However, for those case types, in many instances, the small population numbers dictate that a smaller sample size may be adequate. Of course, if all cases are included in the sample, the question of statistical significance does not arise.

The evaluation was less successful in achieving the 100 mediations per case type target for Ottawa. The Ottawa mediators, lawyers and litigants responded at a very similar *rate* to that of their Toronto counterparts. However, because of the fewer number of cases selected for the sample, their responses were fewer in number.

Possible explanations for this lower than expected response rate are presented here because such information might prove useful in subsequent and separate efforts to monitor the results of mediation programs either in Ottawa or in other courts.

1. In setting the sampling procedural rules, the evaluators were not aware of and did not sufficiently take into account the relatively high rate at which cases are disposed in Ottawa before the mediation takes place. A large number of Ottawa cases were in effect removed from the pool eligible for inclusion in the sample.
2. About halfway through the evaluation, the Evaluation Steering Committee decided to report results separately for Simplified Rules Cases. Since this case type is defined on the separate dimension of amount of claim ($6,000 to $25,000), and represents a sizeable proportion of the total caseload, the Simplified Rule category draws significant numbers of cases out of the other case type categories.[10]
3. Although court staff and the evaluators did work very closely in efforts to ensure that the sampling procedures were being applied in the expected manner, the importance of intensive pre-testing and monitoring all procedures connected with an evaluation or monitoring program cannot be overemphasized.

The final result, however, is that the sample of data from the evaluation forms from both Ottawa and Toronto mediators, litigants and lawyers represents a very valuable resource. The sample size in both cities was certainly sufficient to support the analysis and conclusions reported in this evaluation.

[10] However, even if the 88 Simplified Rules cases shown in Figure B2.7 were distributed among the other case types, the target of 100 would still not be achieved.

2.4 The Control Group

2.4.1 Introduction

When the Protocol Committee of the Civil Rules Committee discussed in mid-1998 how a mandatory mediation pilot project would be evaluated, the availability of a control group — a set of cases that could validly be compared with cases governed by the new Rule 24.1 — was a key consideration, and subject to extensive discussion and debate. The original evaluation framework prepared at that time for the Civil Rules Committee devoted significant effort to ascertaining whether and how a control group could be defined and studied. Generally speaking, a control group would consist of a comparable mix of case managed cases that did not undergo any form of mediation.

Data from the Toronto control group provided the foundation of a key part of the analysis of the impact of mandatory mediation on the pace of litigation in Chapter 3. Data from the control group – especially regarding the use of oral discoveries – was also important for the Chapter 4 analysis of the impact of mandatory mediation on costs.

Section 3.2 of Chapter 3 of this report introduces the main logical and strategic considerations in defining the Toronto control group. The section that follows focuses on the operational and statistical reasoning underlying the selection of cases to include in that control group.

2.4.2 Selecting Cases for the Control Group

Given the importance of comparing the effect of mandatory mediation for a number of distinct types of cases, it was necessary to ensure that there would be enough cases in the control group to compare pre-1999 and post-1999 civil cases within as many major case types as possible. In theory, it should be possible to go back far enough in time to accumulate a substantial number of cases in a large number of case categories. This assumption faced some technical limitations, in that conversion of the Toronto civil case management software from DOS to Windows in the mid-1990s made it impossible within a reasonable cost to identify a complete universe of cases from which to draw a sample.

However, a more fundamental concern was articulated from the beginning: court records simply do not record case settlement dates accurately. This has been a problem in the Sustain system, but it is also a problem in any court record system, automated or manual. Dispositions based on an agreement between the parties are not recorded by the court unless the parties submit documentation to the court, and in those cases, the court is either notified some weeks after the agreement, or never notified at all. Ontario litigators have stated that the increasing size of the fee required to file the notice has produced this result, but in fact courts that require no fee at all still find hundreds of civil cases in their files with no identifiable disposition.

Since the purpose of having a control group is to compare whether those cases settle earlier or later or at the same time as cases subject to mandatory mediation, getting accurate and complete information on actual settlement dates becomes critical. A settlement at or immediately after a mediation session can be dated with some confidence. What about a settlement that emerges from periodic discussion and exchange of correspondence? If a decision is made to identify the settlement date as the date the court was notified, we could not use the settlement date shown in the Mediator's Report for Rule 24.1 cases, thus eliminating the utility of one of the most useful pieces of data available to the evaluation.

The solution to this dilemma was to use the Toronto court's civil case data to identify cases for the control group, and then send a brief questionnaire to counsel asking them to provide information on settlement dates. This strategy has its own built-in problems: the control group would need to be big enough to ensure that enough responses would come from the lawyers to generate meaningful patterns in the data. But the cases in the control group would need to be fresh enough that the lawyers could identify whether the case was still active or not, and if it had been completed, to identify the method and timing of disposition. Using older cases would reduce the likelihood that lawyers could easily locate files rather than have to look into a file storage area, an important factor in order to identify cases that settled early without a requirement for mandatory mediation.

Within these parameters, a protocol was developed by which staff of the pilot project could identify 1,093 cases for inclusion in the control group. The time period selected was from January 1 through October 31, 1998. During that time, 1,437 defended case-managed cases were commenced in Toronto. They fell into the following case types, based on how the plaintiff checked each of the categories designated by the court at the time of filing:

Figure B2.6
Distribution of Defended Case-Managed Cases by Case Type
(Jan 1 through Oct 31, 1998)

Motor vehicle[11]	319
Contract commercial	301
Other	215
Negligence	174
Collection	172
Wrongful dismissal	130
Real property	40
Medical malpractice	36
Trust and fiduciary duties	31
[All other remaining case types]	19
TOTAL	1,437

[11] "Motor vehicle" includes the separate category of motor vehicle (family law/children's law).

Using the end of October as the cutoff date produced enough cases to ensure that with a good response from counsel to the questionnaire form, it would be possible to have information for about 100 cases in the six largest categories. The remaining categories were so small that a substantial enough number of cases would be difficult to generate without increasing the time period beyond workable limits. The smallest category ("remaining case types") is actually the sum total of cases in a couple of dozen categories that are found in the Sustain data system but are rarely filed. Estates (not case managed) and other professional malpractice are the two most common case types grouped under this heading, and there was no consensus among members of the Evaluation Committee that it would be appropriate to merge either of these into one of the nine other case types.

The October cutoff also meant that cases filed in November and December – two months immediately before the beginning of the Mandatory Mediation Program -- would not be included. This strategy prevented inclusion of cases in which the possibility was highest that some plaintiffs might choose to initiate litigation early to avoid Rule 24.1. The potential for contamination of the representativeness of the cases in the control group was therefore eliminated. (It should be noted that there is no reason to believe that this behaviour did in fact occur.)

The one exception to our selection of 1998 cases was in the area of medical malpractice. Members of the Evaluation Committee, including members from Ottawa, questioned whether early mediation as prescribed by Rule 24.1 was at all useful in those cases, and singled them out as problematic. Thus, it seemed important to highlight this area, even though the medical malpractice caseload is quite small in Toronto. The Toronto filings were checked, and it was found that by going back only four months, to September 1, 1997, and going forward to November and December, 1998, one could double the number of medical malpractice cases from the 36 cases shown above, to a total of 72, and at least obtain some marginal improvement in the quantity of baseline data available to the Evaluation Committee.

A decision was made to reduce the number of cases in the three largest categories, since a good snapshot of those case types could be obtained without sending a questionnaire to lawyers in every one of the cases. As shown in the second column in Figure B2.7 below, court staff was asked to omit every second case in the motor vehicle and contract commercial categories, and every third case in the "Other" category. (It should be noted here that "Other" is a choice given to plaintiffs on the court's case information form. Plaintiffs are then asked to identify the case that they were unable to fit into any specifically identified category. In the evaluation, the subject matter of these cases was not checked against the case files.)

Figure B2.7
Numbers of Cases in the Control Group

	All Cases	Control Group Cases
Motor vehicle	319	160
Contract commercial	301	151
Other	215	144
Negligence	174	174
Collection	172	172
Wrongful dismissal	130	130
Real property	40	40
Medical malpractice	36	72
Trust and fiduciary duties	31	31
[All other remaining case types]	19	19
TOTAL	1,437	1,093

2.4.3 Distributing the Questionnaire

A "fax-back" form (See Figure B2.8) was then mailed by court staff in the spring of 2000 to the plaintiff's lawyer identified in the court's automated database. The form was sent along with a letter from Associate Chief Justice Coulter Osborne of the Court of Appeal, who chairs the Civil Rules Committee, asking for the cooperation of counsel in completing the questionnaire.

The initial response rate was quite good for a mail-in questionnaire, going above 50% fairly early and building toward 60%. Nonetheless, at that point, it was decided to send a follow-up request to the plaintiff's lawyer. An alternative strategy would have been to send the form to a lawyer for one or more of the defendants, but the previous response rate from plaintiff's counsel was high enough to suggest that a reminder letter would be sufficient. That proved to be the case. A total of 791 questionnaires were returned and analysed in this report, a very solid response rate of 72.4%.

Figure B2.8: Rule 24.1 Evaluation: Control Group FAX-BACK Form

A. Case Identification

1. Case Name *(Filled in prior to mailing.)*
(Filled in prior to mailing.)

2. Case Number: *(Filled in prior to mailing.)*

3. Counsel: *(Filled in prior to mailing.)*

4. Has this action settled? *(please check one box)*

☐ Yes ☐ no

If "yes", go to section B

If "no" go to section C

B. Settled Actions (i.e question 4 = yes),

5. What was the date (month and year) when the parties agreed to the terms of the settlement?

mm yy

6. Is there a court order or judgment finally disposing of the action?

☐ yes ☐ no

If the answer to Question 6 is "yes",

7. What was the date (month and year) of that court order or judgment?

mm yy

please skip to section D.

C. Cases that have not settled (i.e. question 4 = no)

8. Has the case been finally disposed of after a contested hearing (for example, a motion for summary judgment, a motion under Rule 21, or a trial)?

☐ yes ☐ No

If the answer to Question 8 is "yes",

9. What was the date (month and year) of the judgment or order finally disposing of the action?

mm yy

please continue to section D.

D: All Cases

10. Has (or had) production of documents occurred in this action?

☐ yes ☐ No

11. Have (or had) oral discoveries occurred in this action?

☐ yes ☐ No

If the case has settled (question 4 = yes) or been finally disposed of (question 8 = yes), Please skip to section F – otherwise continue to section E.

E. Cases that have not settled or been finally disposed

12. If the case has neither settled nor been finally disposed of, what is its current status? *(please check as many as apply)*

- ☐ a. Action set down for trial
- ☐ b. Date set for pretrial conference.
- ☐ c. Completed pretrial and awaiting trial.
- ☐ d. Settlement discussions continuing
- ☐ e. Not currently active.
- ☐ f. Other. Please specify: _____

F: Thank you for your assistance

13. Person who completed this form: _____

14. If you are willing to be contacted to clarify your above response, please provide your phone number here (___) ___ - _____

PLEASE FAX THIS FORM TO: (416)-___-____ (OR IT CAN BE MAILED TO: .)

Thank you again for your help in evaluating Rule 24.1.

Response rates by case type are shown in Figure B2.9.

Figure B2.9
Responses to the Toronto Fax-back Control Group Questionnaire

	Control Group Cases	Responses	% Response
Motor vehicle	60	101	63%
Contract commercial	151	110	73%
Other	144	110	76%
Negligence	174	134	77%
Collection	172	117	68%
Wrongful dismissal	130	91	70%
Real property	40	25	63%
Medical malpractice	72	54	75%
Trust and fiduciary duties	31	25	81%
[All other remaining case types]	19	24	
TOTAL	1,093	791	72%

Chapter 3: Notes on Measuring the Pace of Litigation

3.1 Time Specific Disposition Rates

Most studies of court delay simply pool all the *completed* cases and calculate the average (mean or median) time that they have taken from beginning to end. This approach would be misleading in our Chapter 3 comparison of control group cases defended in 1998 and cases defended under Rule 24.1 in 1999 and 2000. Since the evaluation had data available on dispositions that occurred up to November 30, 2000,[12] cases in the control group could have had between 25 and 35 months to be disposed (depending on whether they had been defended on January 1 or October 31 of 1998). In comparison, the Rule 24.1 cases could have had between one day and 23 months to be disposed. Thus, solely because of the different follow-up periods employed, the control group on average would likely have longer times to disposition. Regardless of what techniques are used, the longer the period of analysis, the higher the proportion of cases that take longer periods to complete.

The obvious difference is that a higher proportion of 1998 cases are likely to have been completed by 2000 than cases initiated in 1999, so the two "averages" are drawn from two very different groups of cases.

Fortunately, there is a way to avoid this difficulty. Rather than try to calculate an average time to disposition for a group of cases that include many that are still pending, what should be done is to determine what percentage of all cases in that group have been completed within specific periods of time. What then emerges are "time-specific disposition rates" that can be used to compare two groups of cases over the same time intervals.

Accordingly, percentages of cases completed were calculated on a quarterly basis. For example, what percentage of the motor vehicle cases in the control group were completed within three months of defence? Within six months? Within nine months? In turn, what percentage of the motor vehicle cases subject to mandatory mediation were completed within three months of defence? Within six months? And so forth.

[12] For the control group, data on dispositions were available from special fax-back forms, supplemented where necessary with data from Sustain.

Three important points should be noted here when looking at the data:

First, the period of time measured is the time from the first statement of defence to the final case disposition, whether by judgment or settlement. Thus the figures do not include the time from commencement of the case to the first defence. It was assumed that this initial period would not change from 1998 to 1999, and this assumption was checked against information in Sustain (and is reported in a subsequent section below).

Second, the mandatory mediation cases are drawn only from cases defended early enough that a minimum of 12 months have elapsed from the month of first defence to the month of possible disposition. Using more recent cases would have meant that some percentage of cases (i.e. from later in 1999 and in 2000) would not have been able to be completed within the time period chosen for comparison with the control group cases. A cutoff time of at least 12 months was chosen for two reasons. First, it was the longest period which could be used and still have enough cases subject to mandatory mediation to make a meaningful comparison with cases in the control group. Second, getting more cases would have limited the analysis to the number of cases completed within nine months, so that a lot of the information obtained from the control group could not have been used for comparison, and the resultant understanding of the effect of mandatory mediation on time to disposition would have been too limited.

In the current analysis, the inclusion of all mandatory mediation cases commenced and defended from January 4 through August 31, 1999, would ensure that the data received from the Ministry of the Attorney General as of November 30, 2000, would include every action recorded or entered on those cases through the beginning of November 2000. The sample of 1999 cases subject to mandatory mediation consists of all 1,016 cases commenced and defended from January through August. Thus the most common case types (e.g. motor vehicle, contract commercial and "other") are more numerous than in the control group, since it is no more difficult to analyse all cases than to draw a smaller sample.

Third, the disposition dates for the mandatory mediation cases have been taken from data in the Sustain system, which means that there is at least some likelihood that actual dispositions will be underreported. As discussed at the beginning of this Appendix a questionnaire was sent to plaintiff's lawyers in the control group cases to address concerns regarding inaccurate or missing settlement dates recorded in Sustain. The dates in Sustain often represent when the settlement order was filed at the court, and not when the settlement was actually reached. Therefore, to the extent that disposition dates for mandatory mediation cases are based on dates entered in Sustain, those dates may in fact make those dispositions appear less expeditious than they really are.

3.2 Using Cox Regression

Use of time-specific disposition rates is a major step forward over the more common use of mean and median times to disposition. However, from a statistical point of view time - specific disposition rates are still not optimal since they do not utilize much of the

information that is available. It is also often difficult to tell whether any differences observed are statistically significant (i.e. cannot be attributed to chance variation due to the particular samples that happen to be used).

The problem with using means or medians to compare times from defence to disposition is that one can accurately measure differences in mean or median disposition times only after sufficient follow up time has passed since the defence. That is, enough time has elapsed to allow the researcher to capture most of the dispositions in different groups of cases. In a civil court system, these disposition times can be quite lengthy.

The problem is that only those cases that are disposed within the full follow-up period can be included in the analysis. But if we had only two years for a follow-up period, isn't there some way we can use information that a higher proportion of cases in one group were defended 23 months ago and are still not disposed?

In fact, a whole family of statistical techniques – called survival analysis techniques – do allow the analyst to use information on cases that have not yet experienced what these techniques call the "terminal event" (in this case final disposition). Further, certain of these models require fewer assumptions than other survival models. One of these models, Cox Regression with multiple covariates, was used successfully in this study to compare the times to disposition of the Toronto control group and Rule 24.1 cases. The analysis was undertaken with case type as a second covariate (i.e. in addition to whether or not the case was in the control group or the Rule 24.1 group).

The Cox Regression analysis was undertaken for all case types combined and the two case types in which a sample (as opposed to all) of the cases were included in the control group.[13]

The results are summarized in Figure B3.1.

Figure B3.1
Summary of Results from Cox Regression of Times from Defence to Disposition: Control Group Compared to Rule 24.1 Cases.

Case Type	Events	Censored	Overall Score		Control vs. Rule 24.1 variable	
			Chi-square	Significance	Wald	Significance
All Cases	1872	2441	26.239	.0000	26.1.21	.0000
Contract commercial	302	412	11.163	.0008	10.9776	.0009
Motor Vehicle	394	655	2.540	.1110	2.5312	.1116

For all case types combined and for contract commercial cases, the results supported (and provided evidence of the statistical significance of) the conclusions in the main body of

[13] For case types in which all cases in the population were chosen for the control group (i.e. medical malpractice negligence, collection, wrongful dismissal, real property, trust and fiduciary duties, remaining case types) the question of statistical significance is not an issue. The results completely describe what actually occurs for both groups. There is no room for error due to sampling.

the text derived from the time-specific disposition rate analysis. The Cox Regression analysis indicated a statistically significant difference in times to disposition for the control group and the Rule 24.1 group – with the latter being faster. However, for motor vehicle cases the Cox Regression results found a statistically significant difference only at the .11 level of significance. Normally a finding of this level (i.e. the difference observed could be due to sampling variability in 11 cases out of 100) would not be adequate to support with sufficient confidence the conclusion that one could go beyond the position stated in the text based on the time specific disposition rates – and state that the difference observed was statistically significant.

Chapter 4: Notes on Measuring Outcome

4.1.1 Exhaustive CHAID Technique

A key part of the analysis in Chapter 5 of the Final Report utilizes a relatively new statistical technique, Exhaustive CHAID, which is appropriate for multivariate analysis with nominal or ordinal categorical variables. The following overview description of CHAID is excerpted from AnswerTree 2.0: User's Guide.[14] (Bracketed comments in italics added.)

"CHAID stands for Chi-squared Automatic Interaction Detector. It is a highly efficient statistical technique for segmentation, or tree growing, developed by Kass (1980) ["An Exploratory Technique for Investigating Large Quantities of Categorical Data," Applied Statistics, 29:2, 119-27]. Using as a criterion the significance of a statistical test, CHAID evaluates all of the values of a potential predictor variable *[see the list of predictor variables used in this evaluation (and their possible values) in Figure B5.5 below]*. It merges values that are judged to be statistically homogeneous (similar) with respect to the target variable *[i.e. neither a complete nor partial settlement occurred]* and maintains all other values that are heterogeneous (dissimilar).

"It then selects the best predictor variable to form the first branch in the decision tree, such that each node *[at that level]* is made of a group of homogeneous values of the selected variable *[i.e. cases in each node would have significantly different values of the likelihood of neither a complete nor partial settlement – compared to cases in other nodes at the same level]*. This process continues recursively until the tree is fully grown. The statistical test used depends upon the measurement level of the target variable. If the target variable is continuous, an F test is used. If the target variable is categorical, a chi-squared test is used.

"... Exhaustive CHAID is a modification of CHAID developed by Biggs, de Ville and Suen (1991) ["A Method of Choosing Multiway Partitions for Classification and Decision Trees," Journal of Applied Statistics, 18:49-62]. Because its method of combining categories of variables is more thorough than that of CHAID, it takes longer to compute."

Figure B5.5 describes each of the target (predicted or dependent) and predictor (independent) variables explored in Chapter 5 using both binary analysis and Exhaustive CHAID. The figure also provides the possible values taken by each variable and the source from which data on the variable for each case were drawn.

[14] ....AnswerTree, SPSS Inc, 1998, pp 188-189 – text in italics added.

Figure B5.5 Variables Used in Segmentation Analysis of Mediation Settlement Rates

Name	Description	Possible Values	Source
Predicted Variables			
Ssdismed	Summary Mediation Settlement Disposition	0 Not even partly settled 1 Partly settled 2 Completely settled at or within 7 days of mediation	Constructed from Mediator Report
S3dismed	Whether Completely Settled at Mediation	0 Not Completely settled 1 Completely settled at or within 7 days of mediation	Constructed from Mediator Report
S4dismed	Whether Not Even Partly Settled at Mediation	0 partly or completely settled at or within 7 days of mediation 1 Not even partly settled	Constructed from Mediator Report
Predictor Variables			
City2	City in Which Mediation Was Held	0 Missing 1 Ottawa 2 Toronto	Micro-file extracted from Sustain
A110grp	Grouped Case Type	CVBS Bulk Sales CVCC Contract Commercial CVCL Construction Lien CVCOL Collection CVMM Medical Malpractice CVMV2 Motor Vehicle (incl. FL/CL) CVN Negligence CVO Other CVRP Real Property CVSA Solicitor & Client Assessment CVTFD Trust & Fiduciary Duties CWD2 Wrongful Dismissal (incl. CWD and CVWD) OTHOTH Remaining Case Types SRULE Simplified Rules	Constructed from Micro-file extracted from Sustain
isroster	Mediator in mediation is Roster or Non-Roster	0 Non-roster Mediator 1 Roster	Constructed from Micro-file extracted from Sustain
Med_typx	Whether mediator is selected by parties or assigned by the Local Mediation Co-ordinator	0 Unknown 1 Selected by Parties 2 Assigned by Coordinator	Constructed from Micro-file extracted from Sustain
Multdef	Number of Defendants Named in Case	0 missing 1 one 2 two 3 three to five 6 six or more	Micro-file extracted from Sustain
Multpl	Number of Plaintiffs named in Case	0 missing 1 one 2 two 3 three to five 6 six or more	Micro-file extracted from Sustain
Snbreak	Number of Rule 24.1 mandatory mediations conducted by mediator (both cities combined)	1 1 to 5 2 6 to 25 3 26 to 50 4 over 50	Constructed from complete file of Mediator Reports
Yr_med	Calendar Year in Which Mediation was Conducted	1999 2000	Mediator Report

4.1.2 The Bivariate Statistical Analyses

One of the initial steps in Chapter 5 was to determine whether there was a statistically significant bivariate relationship between each of the eight predictor variables and each of the three predicted settlement variables. The statistical results are summarized in Figure B5.6.[15]

Figure 5.6: Tests of Significance of Bivariate Relationships

Predictor Variable		Predicted Variables		
		Summary Mediation Settlement Disposition (ssdismed)	Whether Completely Settled at Mediation (s3dismed)	Whether Not Even Partly Settled at Mediation (s4dismed)
City2	City in Which Mediation Was Held	* Pearson chi-square b. Lambda	* Pearson chi-square - b. Lambda	- Pearson chi-square - b Lambda.
A110grp	Grouped Case Type	* Pearson chi-square * Lambda (.041)	* Pearson chi-square - Lambda (.003)	* Pearson chi-square - Lambda (.009)
isroster	Mediator in mediation is Roster or Non-Roster	* Pearson chi-square b Lambda	- Pearson chi-square - b Lambda	* Pearson chi-square - Lambda (.007)
Med_typx	Mediator is chosen by parties or assigned by Local Mediation Co-ordinator	* Pearson chi-square * Lambda (.056)	* Pearson chi-square b Lambda	* Pearson chi-square b Lambda
Multdef	Number of Defendants Named in Case	* Pearson chi-square - Lambda (.03)	* Pearson chi-square b Lambda	* Pearson chi-square b Lambda
Multpl	Number of Plaintiffs named in Case	* Pearson chi-square - Lambda (.011)	* Pearson chi-square b Lambda	* Pearson chi-square b Lambda
Snbreak	Number of Rule 24.1 mandatory mediations conducted by mediator (both cities combined)	* Pearson chi-square * Lambda (.058)	* Pearson chi-square b Lambda	* Pearson chi-square * Lambda (.058)
Yr_med	Calendar Year in Which Mediation was Conducted	- Pearson chi-square b Lambda	- Pearson chi-square b Lambda	- Pearson chi-square b Lambda

** significant at the .05 level*
- not significant at the .05 level
Lambda = Lambda with Predicted variable as dependent variable
b Settlement dependent Lambda could not be computed because the asymptotic standard error equals zero

[15] Given the nature of the variables, Lambda would be an appropriate test of statistical significance between the predictor and predicted variables – more specifically Lambda with the predicted variable as the dependant variable. However, since in many cases it was impossible to calculate Lambda (see footnote b to Figure 5.6) Pearson's Chi-Square statistic was also used.

Appendix C: Evaluation Questionnaires

Three sets of questionnaires are filled out for each of a sample of mediations:

- The Mediator's Evaluation Form (filled out by the mediator within 10 days of the mediation session)
- The Lawyer's Evaluation form (Part A filled out by each lawyer within 10 days of the mediation session: Part B filled out by each lawyer when the case is finally disposed)
- The Litigants's Evaluation form (Part A filled out by each litigant within 10 days of the mediation session: Part B filled out by each litigant when the case is finally disposed)

These forms are also available from the Ontario Ministry of the Attorney General, or can be downloaded electronically from the World Wide Web at

www.thehanngroup.com

(select "Projects", then "Mandatory Mediation Evaluation", then "More Information").

MEDIATOR'S REPORT

Required by subrule 24.1.15(1) and (2) of the Rules of Civil Procedure

Ontario

*If a Certificate of Non-compliance is filed with the Local Mediation Coordinator (LMC) by the mediator, this report should **not** be filled out.*

*Otherwise, within 10 days after the mediation is concluded, you must forward this Mediation Report **to the Local Mediation Coordinator and to the parties**.*

*In addition – if this case has been selected for the evaluation sample – please forward the separate Mediator's Evaluation Form **to the evaluators only**.*

1. Court File Number: _____

2. Title of Proceeding *(short title of case)*:

3. Mediator Information
   a) Name: _____

(Off-roster mediators only)
   b) E-mail:
   c) Tel: (____) _____-
   d) Fax: (____) _____-

(Office use only)
   e) Mediator Code ☐

4. Please record the days on which sessions were held in this mediation, and indicate the total duration of all sessions on each of those days. (by checking √ the appropriate box for each day)

	(*dd*	*mm*	*yyyy)*	*Total Time(hours) each day* 0 to 2	over 2 to 3	over 3 to 4	over 4
a) day 1	____	____	____	☐	☐	☐	☐
b) day 2	____	____	____	☐	☐	☐	☐
c) day 3	____	____	____	☐	☐	☐	☐
d) day 4	____	____	____	☐	☐	☐	☐

(if mediation sessions were held on more than 4 dates, please indicate the following)

e) # of additional dates ☐ f) date of last session ____ ____ (*dd* *mm*) g) total duration of these additional sessions ☐ ____ (*yyyy*) *hours*

5. **If the parties reached a complete settlement at or within 7 days of the end of the mediation,** please check √ a) or b) below.

The complete settlement occurred

a) ☐ by the *end* of the last session in this mediation,

b) ☐ *after*, but *within 7 days* of the last session in this mediation.

⇒ ***if a or b is checked, Skip to Question 7***

6. **The parties have not reached a complete settlement of all issues in the case --** however, within 7 days of the end of the mediation (*please check √ all that apply*)

a) ☐ at least one of the issues on the Statement of Issues had been resolved

b) ☐ none of the issues on the Statement of Issues had been resolved

c) ☐ other significant issues (i.e. issues not on the Statement of Issues) had been resolved

d) ☐ no other significant issues had been resolved

(If the case has been selected for the evaluation sample, more detailed comments on the outcome of the mediation are requested in the separate Mediator's Evaluation Form.)

7. Please enter the date you submitted this Mediator's Report to the Local Mediation Coordinator

____ ____ ____
dd mm yyyy

8. Have you been notified that this case has been selected for the evaluation sample? ☐ yes ☐ no

9. *If yes*, what date did you forward the separate Mediator's Evaluation Form to the evaluators?

☐ same as 7, or ____ ____ ____
dd mm yyyy

10. Mediator's Signature

MEDIATOR'S EVALUATION Form

If this case has been selected for inclusion in the evaluation sample, within 10 days after the mediation is concluded this Mediator's Evaluation Form should be mailed in a sealed envelope directly to the evaluators at the address shown on the right:

Mandatory Mediation Evaluation Project
Robert Hann and Associates Limited
331 Walmer Road (Suite #2)
Toronto, Ontario M5R 2Y3

[Do not send this Mediator's Evaluation Form to either the Local Mediation Coordinator (LMC) or the parties .
The information provided in this Mediator's Evaluation Form will be kept confidential between the mediators and the evaluators. Only summary statistical tabulations covering a number of mediator's reports will be reported in any evaluation documents]

11. Court File Number:	12. Title of Proceeding (*short tile of case*):

13. The following persons attended at least one of the mediation sessions and have indicated that they are willing to be contacted regarding the Litigant's or Lawyer's report they will be submitting: *(Please also list contact phone numbers or Email addresses)*

Litigants: Names and contact numbers	Plaintiff or Defendant (*check√ one* **for each**)		Lawyers: Names and contact numbers
a) _____	❑	❑	
b) _____	❑	❑	
c) _____	❑	❑	
d) _____	❑	❑	

(if a company, please include name of company & official)

⇒ if a complete settlement was reached within 7 days of the conclusion of the mediation, skip to the top of the next page ⇒⇒

14. **If the parties did NOT reach a complete settlement at or within 7 days of the mediation,** please indicate the degree of progress made during the mediation toward the narrowing or partial settlement of each of the following types of issues:

[If there was more than one issue of any type --i.e. in any row a) to m), below – and a different degree of progress was made in each of the issues, please circle all the numbers which apply in that row.]

Type of issue	*Degree of progress made regarding issue*						
	Not Applicable or don't know	Matters made worse	No progress	Agreement reached on process to move ahead	Progress made toward settlement/ agreement	Agreement or settlement in principle	Formal settlement or agreement reached
a) Types of damages that are recoverable	1	2	3	4	5	6	7
b) Amount of damages	1	2	3	4	5	6	7
c) Assignment of liability	1	2	3	4	5	6	7
d) The parties to be added to or removed from the action	1	2	3	4	5	6	7
e) Claims to be added to or removed from the action	1	2	3	4	5	6	7
f) Interpretation or clarification of the terms of an existing offer of settlement	1	2	3	4	5	6	7
g) Ratification of an offer by person(s) in authority	1	2	3	4	5	6	7
Determination, clarification or resolution							
h) of a point of law	1	2	3	4	5	6	7
i) of a procedural issue	1	2	3	4	5	6	7
j) of the important facts	1	2	3	4	5	6	7
Other (please specify)							
k) _____		2	3	4	5	6	7
l) _____		2	3	4	5	6	7
m) _____		2	3	4	5	6	7

Whether or not a settlement was reached at the mediation, *the evaluators are asking the parties, the lawyers and the mediator in this mediation for their opinions regarding other impacts mediation had or will have – compared to the likely impacts of a more traditional litigation process that did not involve mandatory mediation. Of particular importance are impacts related to the main objectives of the mandatory mediation pilot project: i.e. achieving a resolution of the dispute in a manner that is:*

- *more timely,*
- *less costly and*
- *more satisfying to the parties.*

The next two questions allow mediators to record their opinion on these impacts.

15. In each of the following areas, please indicate your opinion regarding the relative impact that mandatory mediation has had (or very likely will have) **in this case** *(please circle one number for each type of impact –a to p).*

Specific Impacts	Compared to a litigation process that did not involve mandatory mediation, mandatory mediation had the following impact in this case					
	Do not Know or n/a	Major negative impact	Some negative impact	No impact	Some positive impact	Major positive impact
a) provided one or more parties with new information they considered relevant	1	2	3	4	5	6
b) developed agreements among the parties to exchange additional information in the future	1	2	3	4	5	6
c) identified matters important to one or more of the parties	1	2	3	4	5	6
d) set priorities among issues	1	2	3	4	5	6
e) developed a process for dealing with the remaining issues	1	2	3	4	5	6
f) facilitated discussion of existing settlement offers	1	2	3	4	5	6
g) facilitated discussion of new settlement offers	1	2	3	4	5	6
h) improved the credibility of one or more of the parties with the other parties	1	2	3	4	5	6
i) achieved a better awareness of the potential monetary savings from settling earlier in the litigation process	1	2	3	4	5	6
j) achieved a better awareness of the potential non-monetary savings from settling earlier in the litigation process	1	2	3	4	5	6
k) at least one of the parties gained a better understanding of **his or her own** case	1	2	3	4	5	6
l) at least one of the parties gained a better understanding of **his or her opponent's** case	1	2	3	4	5	6
m) improved the business or personal relationship between the parties	1	2	3	4	5	6
n) enhanced communications between at least one party and his or her own lawyer	1	2	3	4	5	6
Additional impacts (please specify)						
o) _____		2	3	4	5	6
p) _____		2	3	4	5	6

16. One of the purposes of the evaluation is to identify as early as possible potential improvements to the mandatory mediation initiative – through changes in Rule 24.1, through changes in administrative policies, procedures and operations, and through changes in the ways mediations are conducted.
Please indicate below whether – **in this case** – the following changes would have harmed or improved the timing or likelihood of reaching either a complete settlement or a fuller narrowing of the issues *(Please list additional suggestions on a separate page if more space is required.)*

(please circle one number for each type of change –a to m)	**Potential impact on settlement or narrowing of issues**				
	Do not Know	Not relevant in this case	Likely harmful impact	Likely no impact	Likely some improve-ment
a) If mediation had begun later in the litigation process	1	2	3	4	5
b) If examinations for discovery had taken place before mediation began	1	2	3	4	5
c) If this type of case had been excluded from the mandatory mediation process	1	2	3	4	5
d) If more information on the mandatory mediation process had been available to one or more of the parties	1	2	3	4	5
e) If more time had been spent during the mediation explicitly discussing the monetary and non-monetary costs and benefits of proceeding further in the court process	1	2	3	4	5
f) If more time had been spent during the mediation in considering information on other aspects of the court/litigation process	1	2	3	4	5
g) If additional information necessary to resolve the dispute had been available at the mediation	1	2	3	4	5
h) If the results of the mediation could not be considered in other disputes involving one or more of the parties	1	2	3	4	5
i) If other parties or individuals had been included in or brought into the mediation process to provide required information	1	2	3	4	5
j) If one or more additional parties with authority to settle had been present at the mediation.	1	2	3	4	5
k) If more time had been set aside for the initial session	1	2	3	4	5
Other changes (*please specify – use reverse if necessary*)					
l) _____		2	3	4	5
m) _____		2	3	4	5

17. My total fees (not including disbursements) for this mediation were within the range indicated below:

	0 to $500	501 to $1,000	1,001 to $1,500	1,501 to $2,000	2,001 to $2,500	2,501- to $3,000	3,001 to $4,000	4,001 to $6,000	over $6,000
a) Initial session	❑	❑	❑	❑	❑	❑	❑	❑	❑
b) All subsequent sessions	❑	❑	❑	❑	❑	❑	❑	❑	❑

c) Mediation services were provided pro bono for____ of the parties.

18. In addition to time spent in the mediation sessions, the following number of hours of preparation time (hours) was also required. *(please check appropriate box)*

0 to 3	*4 to 6*	*7 to 10*	*over 10*
❑	❑	❑	❑

19. Date ____ ____ ____ (*dd* *mm* *yyyy*)

20. Mediator's Signature _____

Thank you for assisting us in the evaluation.
If you have any questions, please contact Bob Hann at hannbob@ican.net or via fax at (416) 944-0290.

Mandatory Mediation Evaluation
Lawyer's Evaluation Form: PART A

(Your individual answers will be kept confidential between you and the evaluators)

*Please mail **Part A** of this form to the evaluators in the envelope provided within 2 days after the mandatory mediation is concluded.*

*If your case settles at the mandatory mediation, please include **Part B** along with **Part A** in the envelope provided within 2 days after the mediation is concluded.*

*If your case does not settle at the mandatory mediation, please mail **Part B** to the evaluators within 10 days after the complete settlement or other final disposition of this case.*

Mail to: **Mandatory Mediation Evaluation Project, Robert Hann and Associates Limited, 331 Walmer Road, Suite 2, Toronto, Ontario M5R 2Y3**

PART A: Mediation Session

1 File Number _____

2 *Title of Proceedings (short title of case)*
_____
_____

3 Lawyer Information

b) Name _____

c) Firm _____
_____

d) E-mail _____

d) Tel (____) _____

e) Fax (____) _____

(Office use only)

f) Lawyer Code ☐

4 In this case I represent the (*check√ one)*
a) plaintiff
b) defendant

5 My client's name is:
_____

6 I have listed below any non-monetary claims in the case
_____
_____:
_____

7 Excluding the current mediation, I have personally participated in the following number of mediations in civil cases before the courts. *(check one box for each capacity)*

	0	1	2	3 to 5	6 to 10	over 10
As lawyer						
As mediator						

8 I have indicated below the **number of cases of this type** (i.e. the same subject matter) in which I have represented clients in court actions: *(check√ one)*

0	1	2	3	4 to 6	7 to 10	over 10

9 Please indicate below how much you agree or disagree with each of the following statements listed. *(Circle one number for each of a through p)*

	NA/ Don't Know	Strongly Disagree	Somewhat Disagree	Neither agree nor disagree	Somewhat Agree	Strongly agree
a) Compared to other cases of a similar type, this case is more complex and/or difficult	...1...	....2.....	.....3.....	.....4.....	.....5.....	....6.....
b) This case was not suitable for mediation.	...1...	....2.....	.....3.....	.....4.....	.....5.....	....6.....
c) The mediation should have been held later in the process	...1...	....2.....	.....3.....	.....4.....	.....5.....	....6.....

9 (cont'd) Please indicate below how much you agree or disagree with each of the following statements listed.

	NA/ Don't Know	Strongly Disagree	Somewhat Disagree	Neither agree nor disagree	Somewhat Agree	Strongly agree
d) The mediator showed an understanding of the legal issues that were important in this case	1	2	3	4	5	6
e) The mediator understood the factual matters relevant to this case	1	2	3	4	5	6
f) I was satisfied with the mediator's skill in moving all parties towards an agreement	1	2	3	4	5	6
g) The mediator was able to address any imbalance of power between the parties.	1	2	3	4	5	6
h) The mediator should have met more frequently with individual parties either before or during the mandatory mediation	1	2	3	4	5	6
i) At least one of the parties did not have authority to reach an agreement	1	2	3	4	5	6
j) More information about the monetary and non-monetary costs and benefits of proceeding further in the court process should have been available to either or both of the parties	1	2	3	4	5	6
k) One of the merits of the mandatory mediation was that it provided a broader context for reaching a resolution (e.g. for considering parties' interests as well as their legal rights and positions)	1	2	3	4	5	6
l) The informal nature of the mediation process assisted negotiations	1	2	3	4	5	6
m) The mandatory mediation provided one or more parties with new relevant information	1	2	3	4	5	6
n) Assuming I had the choice, I would use mediation again to resolve future disputes under similar circumstance	1	2	3	4	5	6
o) I was satisfied with the overall mandatory mediation experience	1	2	3	4	5	6
p) Justice was served by this mediation process	1	2	3	4	5	6

10 **If the parties have completely settled, please skip this question and go to PART B. If the parties did NOT reach a complete settlement at the mandatory mediation,** please indicate the degree of progress made during the mediation toward the narrowing or partial settlement of each of the following types of issues.

[If there was more than one issue of any type—i.e. in any row a) to m) below—and a different degree of progress was made in each of the issues, please circle all the numbers which apply in that row.]

Issues regarding:	NA/ Don't know	Matters Made Worse	No Progress	Agreement reached on process to move Ahead	Progress made toward settlement/ agreement	Agreement or settlement reached in principle	Formal settlement or agreement reached
a) Types of damages that are recoverable	1	2	3	4	5	6	7
b) Amount of damages	1	2	3	4	5	6	7
c) Assignment of liability	1	2	3	4	5	6	7
d) The parties to be added to or removed from the action	1	2	3	4	5	6	7
e) Claims to be added to or removed from the action	1	2	3	4	5	6	7
f) Interpretation or clarification of the terms of an existing offer of settlement	1	2	3	4	5	6	7
g) Ratification of an offer by person(s) in authority	1	2	3	4	5	6	7
Determination, clarification or resolution of:							
h) a point of law	1	2	3	4	5	6	7
i) a procedural issue	1	2	3	4	5	6	7
j) the important facts	1	2	3	4	5	6	7
Other: *(please specify)*							
k) _____	1	2	3	4	5	6	7
L _____	1	2	3	4	5	6	7
m) _____	1	2	3	4	5	6	7

11 Date dd mm yyyy

12 Lawyer's Signature _____

*Please mail **Part A** of this form to the evaluators in the envelope provided within 2 days after the mandatory mediation is concluded.*

*If your case settles at the mandatory mediation, please include **Part B** along with **Part A** in the envelope provided within 2 days after the mediation is concluded.*

*If your case does not settle at the mandatory mediation, please mail **Part B** to the evaluators within 10 days after the complete settlement or other final disposition of this case.*

THANK YOU FOR ASSISTING US IN THE EVALUATION.

If you have any questions, please contact Bob Hann at hannbob@ican.net or fax us at (416) 944-0290.

Mandatory Mediation Evaluation
Lawyer's Evaluation Form: PART B

(Your individual answers will be kept confidential between you and the evaluators.)

***If your case settles at the mandatory mediation**, please mail **Part B** along with Part A in the envelope provided within 2 days after the mandatory mediation is concluded.*

***If your case does not settle at the mandatory mediation**, please mail **Part B** to the evaluators within 10 days of the complete settlement or final disposition of your case.*

PART B *Settlement/ Other Final Disposition*	13 Court File Number _____	*14 Title of Proceedings (short title of case)* _____ _____

15 Between the end of the first mandatory mediation session and the final disposition of the case, the following events took place: *(check√ all that apply)*

a) the case settled at the initial mandatory mediation—no further events
b) the parties agreed to additional mediation session(s) **with the mediator who conducted the mandatory mediation**
c) the parties agreed to additional mediation session(s) **with a mediator who did not conduct the mandatory mediation**
d) the parties and/or their lawyers continued negotiations privately **without** the assistance of a mediator

16 This case was finally concluded as follows: *(check√ one)*

a) **completely settled** by the *end* of the **mandatory mediation** (including, if any, additional mediation sessions conducted by the mediator who conducted the initial mandatory mediation)
b) **completely settled** *after* the close of the **mandatory mediation** sessions(s)
c) **completely settled** by the *end* of **additional non-mandatory** mediation session(s)
d) **completely settled** *after* the close of **additional non-mandatory** mediation sessions(s)
e) abandoned after the last mediation
f) concluded at trial
g) other *(specify)* _____

17 Please indicate the date of settlement or other final disposition. dd ___ mm ___ yyyy _____

18 The total dollar amount of the settlement or court disposition (excluding legal costs) was:

a) Not applicable or abandoned
b) $_____ *(please enter amount to nearest $1,000)*
c) there was a monetary amount included in the settlement or other disposition but the settlement required that the amount remain confidential
d) there was no monetary amount included in the settlement or other disposition

(please check box if applicable)

19 Did the settlement or court disposition address non-monetary outcomes?

a) NA or abandoned b) no c) yes If YES, indicate the type of non-monetary outcome(s):

_____
_____
_____

The following Question 20 is only for those cases that have <u>settled</u>. If this case was not settled (but disposed of in another way or abandoned), please go to Question 21.

20 Please indicate how much you agree or disagree with the following statements. *(circle one number for each of a through d)*

	NA/ Don't Know	Strongly Disagree	Somewhat Disagree	Neither Agree nor Disagree	Somewhat agree	Strongly agree
a) The settlement was better for my client than it would have been without mandatory mediation.....	...1...	....2.....	.....3.....	.....4.....	.....5.....	....6.....
b) The settlement reached with the assistance of the mandatory mediation was fairer than what would have happened without the mediation.....	...1...	....2.....	.....3.....	.....4.....	.....5.....	....6.....
c) The consensual nature of the mediation process makes it more likely that there will be compliance with the settlement than would have otherwise been the case.....	...1...	....2.....	.....3.....	.....4.....	.....5.....	....6.....
d) One of the main reasons for reaching an agreement was the fact that the defendant admitted some responsibility for the dispute during the mandatory mediation.....	...1...	....2.....	.....3.....	.....4.....	.....5.....	....6.....

Questions for all cases→

21 Please indicate your views regarding the relative impacts that mandatory mediation has had on the following:

	Compared to a litigation process that did not involve mandatory mediation, mandatory mediation had the following impacts in this case					
	Don't Know or n/a	Major positive impact	Some positive impact	No impact	Some negative impact	Major negative impact
a) Mandatory mediation's effect on the length of time between the filing of the claim and the conclusion of the case ("positive impact" refers to **reduced** time).....	...1.....	2.....	3.....	4.....	5.....	6.....
b) The effect of mandatory mediation on at least one of the parties' satisfaction with the judicial process.....	...1.....	2.....	3.....	4.....	5.....	6.....

22 A major purpose of this evaluation is to examine the degree to which the Mandatory Mediation Program has met its objectives. One of the main objectives of the Program is to reduce the legal costs for litigants. This questionnaire provides the only opportunity to collect information about the costs parties incurred. The evaluators would, therefore, greatly appreciate as much detail as you can provide about your clients' costs.

Were there any savings to your client(s) in this case as a result of mandatory mediation?

a) YES, substantial savings b) YES, some savings
c) no difference
d) NO, a substantial increase e) NO, some increase
f) not sure

23 If you answered "Yes" in Question 22, please indicate a) the approximate amount of the savings and b) details about the source of these savings.

a) Savings:

0 – $500	3,001 – 4,000	8,001 – 9,000	over 30,000
501 – 1,000	4,001 – 5,000	9,001 – 10,000	
1,001 – 1,500	5,001 – 6,000	10,001 – 15,000	
1,501 – 2,000	6,001 – 7,000	15,001 – 20,000	
2,001 – 3,000	7,001 – 8,000	20,001 – 30,000	

b) Source(s) of savings: *(please indicate any sources for your client's savings such as elimination of discovery or motions)*

_____ _____

_____ _____

_____ _____

_____ _____

24 Do you have any suggestions regarding how the Mandatory Mediation Program could be improved? If YES, please list: *(use other side of the page if necessary)*

25 Date dd mm yyyy

26 Lawyer's Signature _____

THANK YOU FOR ASSISTING US IN THE EVALUATION.

If you have any questions, please contact Bob Hann at hannbob@ican.net or fax us at (416) 944-0290.

***If your case settles at the mandatory mediation**, please mail **Part B** along with **Part A** in the envelope provided within 2 days after the mandatory mediation is concluded. Mail to:*

Mandatory Mediation Evaluation Project
Robert Hann and Associates Limited
331 Walmer Road, Suite 2
Toronto, Ontario M5R 2Y3

***If your case does not settle at the mandatory mediation**, please mail **Part B** to the evaluators within 10 days of the complete settlement or other final disposition of your case.*

Mandatory Mediation Evaluation
Litigant's Evaluation Form: Part A

(Your individual answers will be kept confidential between you and the evaluators.)

*Please mail **Part A** of this form to the evaluators in the envelope provided within 2 days after the mandatory mediation is concluded.*

*If your case settles at the mandatory mediation, please mail **Part B** along with **Part A** in the envelope provided within 2 days after the mediation is concluded.*

*If your case does not settle at the mandatory mediation, please mail **Part B** to the evaluators within 10 days of the complete settlement or other final disposition of your case.*

Mail to: **Mandatory Mediation Evaluation Project, Robert Hann and Associates Limited, 331 Walmer Road, Suite 2, Toronto, Ontario M5R 2Y3**

PART A: Mediation Session

1 Court File Number _____

2 Title of Proceedings (short title of case)
_____
_____

3 a) Your Name
_____

a) Organization _____
_____

(If you are willing to be contacted for follow-up information by the evaluators, please provide the following information)

c) E-mail: _____

d) Tel: (_____) _____

e) Fax: (_____) _____

4 I am involved in this case as:
- a) an employee, agent or trustee of a business
- b) a professional self employed person
- c) a non-professional self employed person
- d) a small business owner (up to 20 employees)
- e) another type of private individual
- f) a larger business owner (20 or more employees)
- g) an official of a government agency
- h) **other** *(please specify)*

_____
_____

6 In this case I am *(check√ one)*
- a) a plaintiff
- b) a defendant

7 My lawyer's name is:
_____

7 In the last FIVE years, I or my organization have been a party to the following **number of civil cases of a type similar to this case**. *(check√ one)*

0 ***1*** ***2*** ***3*** ***3 to 6*** ***7 to 10*** ***over 10***

8 **Excluding this case,** I have participated in **mediation processes** in the following number of civil cases *(check√ one box)*

0 ***1*** ***2*** ***3*** ***4 to 6*** ***7 to 10*** ***over 10***

9 At the time this claim was filed, I or my organization had a personal or business relationship with the opposing party *(check√ one)*
- a) no
- b) yes c) If yes, I/we have had this type of relationship for *(check√ one)*
  - less than one month
  - 1 to 6 months
  - 7 months to 1 year
  - over 1 year, but less than 3 years
  - three years or more

(Note: if there are two or more opposing parties, answer with respect to the party you have known longest.)

10 Please indicate below how much you agree or disagree with each of the statements listed. *(Circle one number for each of a through v)*

	NA/ Don't Know	Strongly Disagree	Somewhat Disagree	Neither agree nor disagree	Somewhat agree	Strongly Agree
a) Compared to other cases of a similar type, this case is more complex and/or difficult	1	2	3	4	5	6
b) This case was not suitable for mediation	1	2	3	4	5	6
c) The information I received about the mandatory mediation program was adequate	1	2	3	4	5	6
d) The mediation should have been held later in the process	1	2	3	4	5	6
e) The mediator showed an understanding of the legal issues that were important in this case	1	2	3	4	5	6
f) The mediator understood the factual matters relevant to this case	1	2	3	4	5	6
g) I was satisfied with the mediator's skill in moving all parties towards an agreement	1	2	3	4	5	6
h) The mediator applied too much pressure to resolve this dispute quickly	1	2	3	4	5	6
i) The mediator was able to address any imbalance of power between the parties	1	2	3	4	5	6
j) The mediator played too significant a role in determining the outcome	1	2	3	4	5	6
k) The mediator should have met more frequently with individual parties either before or during the mandatory mediation	1	2	3	4	5	6
l) At least one of the parties did not have authority to reach an agreement	1	2	3	4	5	6
m) More information about the monetary and non-monetary costs and benefits of proceeding further in the court process should have been available to either or both of the parties	1	2	3	4	5	6
n) One of the merits of the mandatory mediation was that it required parties and their counsel to begin negotiations earlier than would otherwise have been the case	1	2	3	4	5	6
o) One of the merits of the mandatory mediation was that it provided a broader context for reaching a resolution (e.g. for considering parties' interests as well as their legal rights and positions)	1	2	3	4	5	6

10 (cont'd) Please indicate below how much you agree or disagree with each of the statements listed.

	NA/ Don't Know	Strongly Disagree	Somewhat Disagree	Neither agree nor disagree	Somewhat agree	Strongly Agree
p) The informal nature of the mediation process assisted negotiations	1	2	3	4	5	6
q) The mandatory mediation provided one or more parties with new relevant information	1	2	3	4	5	6
r) The mandatory mediation helped improve the business or personal relationship between the parties	1	2	3	4	5	6
s) The mandatory mediation helped at least one of the parties gain a better understanding of the other side's case	1	2	3	4	5	6
t) Assuming I had the choice, I would use mediation again to resolve future disputes under similar circumstances	1	2	3	4	5	6
u) I was satisfied with the overall mandatory mediation experience	1	2	3	4	5	6
v) Justice was served by this mediation process	1	2	3	4	5	6

11 **If you have completely settled, please skip this question and go to PART B. If you did NOT reached a complete settlement at the mandatory mediation,** please indicate the degree of progress made during the mediation toward the narrowing or partial settlement of each of the following types of issues.

[If there was more than one issue of any type—i.e. in any row a) to m) below—and a different degree of progress was made in each of the issues, please circle all the numbers which apply in that row.]

Issues regarding:	NA/ Don't know	Matters made worse	No Progress	Agreement reached on process to move ahead	Progress made toward settlement/ agreement	Agreement or settlement reached in principle	Formal Settlement or agreement reached
a) The types of damages that are recoverable	1	2	3	4	5	6	7
b) Amount of damages	1	2	3	4	5	6	7
c) Assignment of liability	1	2	3	4	5	6	7
d) The parties to be added to or removed from the action	1	2	3	4	5	6	7
e) Claims to be added to or removed from the action	1	2	3	4	5	6	7
f) Interpretation or clarification of the terms of an existing offer of settlement	1	2	3	4	5	6	7
g) Ratification of an offer by person(s) in authority	1	2	3	4	5	6	7
Determination, clarification or resolution of:							
h) a point of law	1	2	3	4	5	6	7
i) a procedural issue	1	2	3	4	5	6	7
j) the important facts	1	2	3	4	5	6	7

11 (cont'd) Please indicate the degree of progress made during the mediation toward the narrowing or partial settlement of each of the following types of issues.

	NA/ Don't know	Matters made worse	No Progress	Agreement reached on process to move ahead	Progress made toward settlement/ agreement	Agreement or settlement reached in principle	Formal Settlement or agreement reached
Other Issues: *(please specify)*							
k) _____							
_____							
_____	...1...	...2.....	...3...	.....4.....	.....5....	.....6.....	.....7.....
l) _____							
_____							
_____	...1...	...2.....	...3...	.....4.....	.....5....	.....6.....	.....7.....
m) _____							
_____							
_____	...1...	...2.....	...3...	.....4.....	.....5....	.....6.....	.....7.....

12 Date dd mm yyyy
___ ___ ____

13 Signature _____

*Please mail **Part A** of this form to the evaluators in the envelope provided within 2 days after the mandatory mediation is concluded.*

*If your case settles at the mandatory mediation, please mail **Part B** along with **Part A** in the envelope provided within 2 days after the mediation is concluded.*

*If your case does not settle at the mandatory mediation, please mail **Part B** to the evaluators within 10 days of the complete settlement or other final disposition of your case. Mail to:*

Mandatory Mediation Evaluation Project
Robert Hann and Associates Limited
331 Walmer Road, Suite 2
Toronto, Ontario M5R 2Y3

THANK YOU FOR ASSISTING US IN THE EVALUATION.

If you have any questions, please contact Bob Hann at hannbob@ican.net or fax us at (416) 944-0290.

Mandatory Mediation Evaluation
Litigant's Evaluation Form: Part B

(Your individual answers will be kept confidential between you and the evaluators.)

***If your case settles at the mandatory mediation session**, please mail **Part B** along with **Part A** in the envelope provided within 2 days after the mediation is concluded.*

***If your case does not settle at the mandatory mediation session**, please mail **Part B** to the evaluators within 10 days of the complete settlement or other final disposition of your case.*

PART B Settlement/ Other Final Disposition	14 Court File Number _____	15 Title of Proceedings (short title of case) _____ _____

16 Between the end of the first mandatory mediation session and the final disposition of the case, the following events took place: *(check√ all that apply)*

a) the case settled at the initial mandatory mediation—no further events
d) the parties agreed to additional mediation session(s) **with the mediator who conducted the mandatory mediation**
e) the parties agreed to additional mediation session(s) **with a mediator who did not conduct the mandatory mediation**
d) the parties and/or their lawyers continued negotiations privately **without** the assistance of a mediator

17 This case was finally concluded as follows: *(check√ one)*

h) **completely settled** by the *end* of the **mandatory mediation** (including, if any, additional mediation sessions conducted by the mediator who conducted the initial mandatory mediation)
i) **completely settled** *after* the close of the **mandatory mediation** sessions(s)
j) **completely settled** by the *end* of **additional non-mandatory** mediation session(s)
k) **completely settled** *after* the close of **additional non-mandatory** mediation sessions(s)
l) abandoned after the last mediation
m) concluded at trial
n) other *(specify)* _____

18 Please indicate the date of settlement or other final disposition. dd ___ mm ___ yyyy ____

19 The total dollar amount of the settlement or court disposition (excluding legal costs) was:

a) Not applicable or abandoned
b) $_____*(please enter amount to nearest $1,000)*
c) there was a monetary amount included in the settlement or other disposition but the settlement required that the amount remain confidential
f) there was no monetary amount included in the settlement or other disposition.

(please check box if applicable)

20 Did the settlement or court disposition address non-monetary outcomes?

a) NA or abandoned b) no c) yes, If YES, please indicate the nature of the outcome(s):

_____
_____
_____
_____

The following Question 21 is only for those cases that have <u>settled</u>. If this case was not settled (but disposed of in another way or abandoned), please go to Question 22.

21 Please indicate how much you agree or disagree with the following statements. *(circle one number for each of a through d)*

	NA/ Don't know	Strongly disagree	Somewhat Disagree	Neither agree nor disagree	Somewhat agree	Strongly agree
a) The settlement was better than it would have been without mandatory mediation	1	2	3	4	5	6
b) The settlement reached with the assistance of the mandatory mediation was fairer than what would have happened without the mediation	1	2	3	4	5	6
c) The consensual nature of the mandatory mediation makes it more likely that there will be compliance with the settlement than would have otherwise been the case	1	2	3	4	5	6
d) One of the main reasons for reaching an agreement was the fact that the defendant admitted some responsibility for the dispute during the mandatory mediation	1	2	3	4	5	6

Questions for all cases →

22 What was the <u>primary</u> fee agreement with your lawyer? *(Check√ all that apply. If you used more than one lawyer or law firm, check boxes for the type of agreement you had with each lawyer or firm.)*

a) Hourly fee
b) Fixed fee
c) Prepaid legal insurance
d) Government staff lawyer
e) Lawyer paid through legal aid
f) Lawyer charged no fee
g) I don't know because my insurance company paid the lawyer
h) I did not use a lawyer
i) Other fee arrangement *(please specify)*

_____
_____
_____

23 Please indicate your views regarding the relative impacts that mandatory mediation has had on the following:

	<u>Compared to a judicial process that did not involve mandatory mediation, mandatory mediation had the following impacts in this case</u>					
	Don't Know or n/a	Major positive impact	Some positive impact	No impact	Some negative impact	Major negative impact
a) Mandatory mediation's effect on the length of time between the filing of the claim and the conclusion of the case ("positive impact" refers to **reduced** time)	1	2	3	4	5	6
b) The effect of mandatory mediation on your satisfaction with the judicial process	1	2	3	4	5	6
c) The effect of mandatory mediation on reducing legal costs	1	2	3	4	5	6

24 Altogether, about how many hours did you spend on the legal aspects of this case? (Include time spent talking with lawyers, going to court, collecting information and filling out forms, but do not include time discussing the case with family and friends.) _____ hours

25 Do you have any suggestions regarding how the Mandatory Mediation Program could be improved?
If YES, please list them below. **(use other side of the page if necessary)**

26 Date dd mm . yyyy	27 Signature
___ ___ ___	_____

THANK YOU FOR ASSISTING US IN THE EVALUATION.

If you have any questions, please contact Bob Hann at hannbob@ican.net or fax us at (416) 944-0290.

*If your case settles at the mandatory mediation, please mail **Part B** along with **Part A** in the envelope provided within 2 days after the mediation is concluded. Mail to:*

Mandatory Mediation Evaluation Project
Robert Hann and Associates Limited
331 Walmer Road, Suite 2
Toronto, Ontario M5R 2Y3

***If your case does not settle at the mandatory mediation session**, please mail **Part B** to the evaluators within 10 days of the complete settlement or other final disposition of your case.*